

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED MARCH 31, 2012

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission File Number: 001-32433

PRESTIGE BRANDS HOLDINGS, INC.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-1297589
(I.R.S. Employer Identification No.)



**90 North Broadway
Irvington, New York 10533
(914) 524-6810**

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

Title of each class:

Name of each exchange on which registered:

Common Stock, par value \$.01 per share

New York Stock Exchange

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

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See 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 Smaller reporting company

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold as of the last business day of the Registrant's most recently completed second fiscal quarter ended September 30, 2011 was \$453.0 million.

As of April 30, 2012, the Registrant had 50,465,933 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's Definitive Proxy Statement for the 2012 Annual Meeting of Stockholders (the "2012 Proxy Statement") are incorporated by reference into Part III of this Annual Report on Form 10-K to the extent described herein.

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TRADEMARKS AND TRADE NAMES

Trademarks and trade names used in this Annual Report on Form 10-K are the property of Prestige Brands Holdings, Inc. or its subsidiaries, as the case may be. We have italicized our trademarks or trade names when they appear in this Annual Report on Form 10-K.

Part I.

ITEM 1. BUSINESS

Note About Forward-Looking Statements

Certain statements in this report, including estimates, projections, statements relating to our business plans, objectives and expected operating results, and the assumptions upon which those statements are based, are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements may appear throughout this Annual Report on Form 10-K, including without limitation, in the following sections: “Business” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations”. These forward-looking statements generally are identified by the words “believe,” “project,” “expect,” “anticipate,” “estimate,” “intend,” “strategy,” “future,” “opportunity,” “plan,” “may,” “should,” “will,” “would,” “will be,” “will continue,” “will likely result,” and similar expressions. Forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties which may cause actual results to differ materially from the forward-looking statements. A detailed discussion of risks and uncertainties that could cause actual results to differ materially from such forward-looking statements is included in the section entitled “Risk Factors” (in Part I, Item 1A of this Annual Report on Form 10-K). We undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events, or otherwise.

Overview

Unless otherwise indicated by the context, all references in this Annual Report on Form 10-K to “we”, “us”, “our”, “Company” or “Prestige” refer to Prestige Brands Holdings, Inc. and our subsidiaries. Similarly, reference to a year (e.g., “2012”) refers to our fiscal year ended March 31 of that year.

We sell well-recognized, brand name Over-the-Counter (“OTC”) Healthcare and Household Cleaning products largely in North America. We use the strength of our brands, our established retail distribution network, a low-cost operating model and our experienced management team to our competitive advantage in these categories. Our ultimate success is dependent on several factors, including our ability to:

- Develop effective sales, advertising and marketing programs;
- Integrate our acquired brands;
- Grow our existing product lines;
- Develop innovative new products;
- Respond to the technological advances and product introductions of our competitors; and
- Continue to grow our presence in the United States and international markets.

2012 Acquisitions

In 2012, we acquired 17 brands, which we believe are key to our growth strategy in the OTC Healthcare category and complementary to our existing OTC Healthcare brands. On January 31, 2012, we completed the acquisition of 15 North American OTC Healthcare brands, including the related contracts, trademarks and inventory from GlaxoSmithKline plc (“GSK”) and its affiliates (the “GSK Brands I”) for \$615.0 million in cash, subject to a post-closing inventory and apportionment adjustment. The GSK Brands I include *BC*®, *Goody’s*® and *Ecotrin*® brands of pain relievers; *Beano*®, *Gaviscon*®, *Phazyme*®, *Tagamet*® and *Fiber Choice*® gastrointestinal brands; and the *Sominex*® sleep aid brand. On March 30, 2012, we completed the acquisition of the *Debrox*® and *Gly-Oxide*® brands in the United States from GSK (the “GSK Brands II”), including the related contracts, trademarks and inventory, for \$45.0 million in cash, subject to a post-closing inventory adjustment.

2011 Acquisitions

In 2011, we acquired six brands, which we believe are also key to our growth strategy in the OTC Healthcare category and complementary to our existing OTC Healthcare brands. On November 1, 2010, we acquired 100% of the capital stock of Blacksmith

Brands Holdings, Inc. (“Blacksmith”), which owned five brands; *Efferdent*®, *Effergrip*®, *PediaCare*®, *Luden’s*® and *NasalCrom*®. On January 6, 2011, we completed the acquisition of certain assets comprising the *Dramamine*® brand in the United States.

Major Brands

Our major brands, set forth in the table below, have strong levels of consumer awareness and retail distribution across all major channels. These brands accounted for approximately 92.0%, 93.0%, and 97.0% of our net revenues for 2012, 2011 and 2010, respectively.

Major Brands	Market Position ⁽¹⁾	Market Segment ⁽²⁾	Market Share ⁽³⁾ (%)	ACV ⁽⁴⁾ (%)
Over-the-Counter Healthcare:				
<i>Chloraseptic</i> ®	#1	Sore Throat Liquids/Lozenges	42.8	87.9
<i>Clear Eyes</i> ®	#2	Eye Allergy/Redness Relief	17.2	88.1
<i>Compound W</i> ®	#2	Wart Removal	35.9	91.8
<i>Dramamine</i> ®	#1	Motion Sickness	37.4	94.4
<i>Efferdent</i> ®	#2	Denture Cleanser Tablets	30.3	93.9
<i>Little Remedies</i> ®	#4	Pediatric Healthcare	5.2	85.0
<i>Luden’s</i> ®	#3	Cough Drops	6.7	96.8
<i>PediaCare</i> ®	#3	Pediatric Healthcare	5.5	87.5
<i>The Doctor’s</i> ® <i>NightGuard</i> ®	#2	Bruxism (Teeth Grinding)	29.6	31.2
<i>The Doctor’s</i> ® <i>Brushpicks</i> ®	#2	Disposable Dental Picks	15.9	44.4
<i>BC</i> ®/ <i>Goody’s</i> ®	#1	Analgesic Powders	98.3	61.5
<i>Beano</i> ®	#1	Gas Prevention	86.7	90.6
<i>Debrox</i> ®	#1	Ear Drops/Treatments	28.3	89.4
<i>Gaviscon</i> ® (5)	#2	Upset Stomach Remedies	15.8	95.0
<i>Dermoplast</i> ®	#3	Pain Relief Sprays	15.0	61.0
<i>Murine</i> ®	#2	Personal Ear Care/Ear Drops & Treatments	10.1	67.4
<i>New-Skin</i> ®	#1	Liquid Bandages	56.3	84.8
<i>Wartner</i> ®	#3	Wart Removal	3.9	29.2
Household Cleaning:				
<i>Chore Boy</i> ®	#2	Soap Free Metal Scrubbers	22.2	30.9
<i>Comet</i> ®	#2	Abrasive Tub and Tile Cleaner	32.8	98.8
<i>Spic and Span</i> ®	#6	Dilutable All Purpose Cleaner	3.0	51.5

(1) We have prepared the information included in this Annual Report on Form 10-K with regard to the market share and ranking for our brands based in part on data generated by SymphonyIRI Group, Inc., an independent market research firm (“IRI”). IRI reports retail sales data in the food, drug and mass merchandise markets. However, IRI data does not include Walmart point of sale data, as Walmart ceased providing sales data to the industry in 2001. Although Walmart represents a significant portion of the mass merchandise market for us, as well as our competitors, we believe that Walmart’s exclusion from the data analyzed by the Company above does not significantly change our market share or ranking relative to our competitors.

(2) “Market segment” is defined by us and is either a standard IRI category or a segment within a standard IRI category and is based on our product offerings and the categories in which we compete.

(3) “Market share” is based on sales dollars in the United States, as calculated by IRI for the 52 weeks ended March 18, 2012.

- (4) “ACV” refers to the All Commodity Volume Food Drug Mass Index, as calculated by IRI for the 52 weeks ended March 18, 2012. ACV measures the ratio of the weighted sales volume of stores that sell a particular product to all the stores that sell products in that market segment generally. For example, if a product is sold by 50% of the stores that sell products in that market segment, but those stores account for 85% of the sales volume in that market segment, that product would have an ACV of 85%. We believe that a high ACV evidences a product’s attractiveness to consumers, as major national and regional retailers will carry products that are attractive to their customers. Lower ACV measures would indicate that a product is not as available to consumers because the major retailers generally would not carry products for which consumer demand may not be as high. For these reasons, we believe that ACV is an important measure for investors to gauge consumer awareness of the Company’s product offerings and of the importance of those products to major retailers.
- (5) *Gaviscon* is distributed by us in Canada only and the market information was obtained from an independent third party market research firm.

Our products are sold through multiple channels, including mass merchandisers and drug, grocery, dollar and club stores, which reduces our exposure to any single distribution channel.

We have developed our brand portfolio through the acquisition of strong and well-recognized brands from larger consumer products and pharmaceutical companies, as well as growth brands from smaller private companies. While the brands we have purchased from larger consumer products and pharmaceutical companies have long histories of support and brand development, we believe that at the time we acquired them they were considered “non-core” by their previous owners. Consequently, these brands did not benefit from the focus of senior level personnel or strong marketing support. We also believe that the brands we have purchased from smaller private companies were constrained by the limited financial resources of their prior owners. After adding a brand to our portfolio, we seek to increase its sales, market share and distribution in both new and existing channels through our established retail distribution network. We pursue this growth through increased advertising and promotion, new sales and marketing strategies, improved packaging and formulations and innovative new products. Our business, business model, competitive strengths and growth strategy face various risks that are described in “Risk Factors” in Part I, Item 1A of this Annual Report on Form 10-K.

Genomma Labs Proposal

On February 21, 2012, Genomma Lab Internacional, S.A.B. de C.V. (“Genomma”) made a highly conditional unsolicited, non-binding proposal to acquire all of the Company’s common stock at a price of \$16.60 per share. After careful review of Genomma’s proposal, and with the assistance of its financial and legal advisors, the Company’s Board of Directors unanimously determined that Genomma’s proposed price was inadequate and the proposal was not in the best interests of the Company and its stockholders.

On March 15, 2012, Genomma announced its intention to nominate a slate of five nominees for election to the Board at the Annual Meeting of Stockholders and to present a proposal to repeal certain bylaws at the Annual Meeting. On May 3, 2012, Genomma announced that it had withdrawn its proposal to acquire the Company’s common stock. On May 10, 2012, Genomma advised the Company that it had withdrawn its (i) slate of nominees for election to the Company’s Board and (ii) proposal to repeal certain bylaws of the Company.

Competitive Strengths

Diversified Portfolio of Well-Recognized and Established Consumer Brands

We own and market well-recognized consumer brands, many of which were established over 60 years ago. Our diverse portfolio of products provides us with multiple sources of growth and minimizes our reliance on any one product or category. Our five legacy core OTC Healthcare brands are *Chloraseptic*, *Clear Eyes*, *Compound W*, *Little Remedies* and *The Doctor’s*. As a result of our fiscal 2011 acquisitions, we added four brands to our core OTC Healthcare brands (*Efferdent*, *Pediacare*, *Luden’s*, and *Dramamine*). In fiscal 2012 we added five brands to our core OTC Healthcare brands (*BC*, *Goody’s*, *Beano*, *Gaviscon* and *Debrox*). We provide significant marketing support to our core brands that is designed to enhance our sales growth and our long-term profitability. The markets in which we sell our products, however, are highly competitive and include numerous national and global manufacturers, distributors, marketers and retailers. Many of these competitors have greater research and development and financial resources than us and may be able to spend more aggressively on sales, advertising and marketing programs and research and development, which may have an adverse effect on our competitive position.

Strong Competitor in Attractive Categories

We compete in product categories that address recurring consumer needs. We believe we are well positioned in these categories due to the long history and consumer awareness of our brands, our strong market positions and our low-cost operating model. However, a significant increase in the number of product introductions or increased advertising, marketing and trade

support by our competitors in these markets could have a material adverse effect on our business, financial condition and results from operations.

Proven Ability to Develop and Introduce New Products

We focus our marketing and product development efforts on the identification of under-served consumer needs, the design of products that directly address those needs and the ability to extend our highly recognizable brand names to other products. In an example of this philosophy, in 2012, we launched four new *PediaCare* Infant Formula products, *PediaCare* 24 Hour Allergy Relief, *Dramamine* for Kids, *Efferdent* Crystals, *Efferdent PM* overnight denture cleanser, and *Comet* Stainless Steel. In 2011, we launched *Little Fevers*® Fever Reducer and *Little Colds*® Honey Elixir under our *Little Remedies* line in addition to *Clear Eyes* Cooling Comfort Redness Relief and Itchy Eye Relief. In 2010, we restaged our entire *Chloraseptic* lozenge product line with a new soothing liquid center formula. Although line extensions and new product introductions are important to the overall growth of a brand, our efforts may reduce sales of existing products within that brand. In addition, certain of our product introductions may not be successful and may be discontinued in the future.

Efficient Operating Model

To gain operating efficiencies, we oversee the production planning and quality control aspects of the manufacturing, warehousing and distribution of our products, while we outsource the operating elements of these functions to well-established third-party providers. This approach allows us to benefit from their core competencies and maintain a highly variable cost structure, with low overhead, limited working capital requirements and minimal investment in capital expenditures as evidenced by the following:

	Gross Margin %	G&A % To Total Revenues	CapEx % To Total Revenues
2012	51.6	12.9	0.1
2011	50.8	12.5	0.2
2010	52.4	11.7	0.2

In 2012, our gross margin percentage increased 80 basis points due primarily to the brands we acquired in the GSK Brands I acquisition as such brands have higher gross margins. In 2011, our gross margin percentage decreased 160 basis points due primarily to the brands we acquired in the Blacksmith acquisition as such brands have higher costs to produce. General and administrative costs, as a percentage of total revenues, increased 40 basis points in 2012 versus 2011, primarily as a result of costs associated with the acquisition of GSK Brands I. General and administrative costs, as a percentage of total revenues, increased 80 basis points in 2011 versus 2010, primarily as a result of costs associated with the Blacksmith and *Dramamine* acquisitions.

Management Team with Proven Ability to Acquire, Integrate and Grow Brands

Our business has grown through acquisition, integration and expansion of the many brands we have purchased. Our management team has significant experience in consumer product marketing, sales, legal and regulatory compliance, product development and customer service. Unlike many larger consumer products companies, which we believe often entrust their smaller brands to successive junior employees, we dedicate experienced managers to specific brands. We seek more experienced personnel to bear the substantial responsibility of brand management and to effectuate our growth strategy. These managers nurture the brands to allow the brands to grow and evolve.

Growth Strategy

In order to continue to enhance our brands and drive growth we focus our growth strategy on our core competencies:

- Effective Marketing and Advertising;
- Sales Excellence;
- Extraordinary Customer Service; and
- Innovation and Product Development.

We execute this strategy through the following efforts:

- **Investments in Advertising and Promotion**

We invest in advertising and promotion to drive the growth of our core brands. Our marketing strategy is focused primarily

on consumer-oriented programs that include media advertising, targeted coupon programs and in-store advertising. While the absolute level of marketing expenditures differs by brand and category, we have often increased the amount of investment in our brands after acquiring them. For example, in 2011, after acquiring *Efferdent*, *Effergrip*, *PediaCare*, *Luden's*, *NasalCrom* and *Dramamine*, we spent approximately 28.4% of the revenues associated with these combined brands in order to drive future growth. In 2012, the advertising and promotion spend related to these brands was 16.0% of revenue. Additionally, advertising and promotion spend for our five legacy core OTC Healthcare products was approximately 15.0% and 15.8% of revenue in 2012 and 2011, respectively. Similarly on the core brands acquired from GSK, we expect to spend in 2013 at levels above our spending on our legacy core OTC Healthcare products. Given the competition in our industry and the contraction of the U.S. economy, there is a risk that our marketing efforts may not result in increased sales and profitability. Additionally, no assurance can be given that we can maintain any increased sales and profitability levels once attained.

- **Growing our Categories and Market Share with Innovative New Products**

One of our strategies is to broaden the categories in which we participate and increase our share within those categories through ongoing product innovation. In 2012, we launched four new *PediaCare* Infant Formula products, *PediaCare* 24 Hour Allergy Relief, *Dramamine* for Kids, *Efferdent* Power Clean Crystals, *Efferdent* PM, and *Luden's* with Vitamin C, *Clear Eyes* All Season Outdoor Eye Drop, *New Skin* Anti-Chafing Spray and *Comet* Stainless Steel Cleanser line. In addition, we introduced a new AccuSafe® dosing system across our *Little Remedies* and *PediaCare* infant analgesics products. In 2011, we launched *Little Fevers* Fever Reducer and *Little Colds* Honey Elixir under our *Little Remedies* line in addition to *Clear Eyes* Cooling Comfort Redness Relief and Itchy Eye Relief. In 2010, we restaged the *Chloraseptic* solid lozenge product line and introduced a soothing liquid center lozenge. While there is always a risk that sales of existing products may be reduced by new product introductions, our goal is to grow the overall sales of our brands.

- **Increasing Distribution Across Multiple Channels**

Our broad distribution base attempts to ensure that our products are well positioned across all available channels and that we are able to participate in changing consumer retail trends. In an effort to ensure continued sales growth, we have altered our focus by expanding our reliance on direct sales while reducing our reliance on brokers. We believe this philosophy allows us to better:

- Know our customer;
- Service our customer; and
- Support our customer.

While we make great efforts to both maintain our customer base and grow in new markets, there is a risk that we may not be able to maintain or enhance our relationships across distribution channels, which could adversely impact our sales, business, financial condition and results from operations.

- **Growing Our International Business**

International sales beyond the borders of North America represented 3.5%, 4.2% and 4.3% of revenues in 2012, 2011, and 2010, respectively. We have designed and developed both products and packaging for specific international markets and expect that our international revenues will grow as a percentage of total revenues. In addition to *Clear Eyes*, *Murine* and *Chloraseptic*, which are currently sold internationally, we license a large multinational company to market the *Comet* brand in Eastern Europe. Since a number of our other brands have previously been sold internationally, we seek to expand the number of brands sold through our existing international distribution network and continue to identify additional distribution partners for further expansion into other international markets.

- **Pursuing Strategic Acquisitions**

Acquisitions are an important part of our overall strategy for growing revenue. We have a history of growth through acquisition (see "Our History and Accomplishments" below). In 2012, we acquired 17 OTC healthcare brands from GSK. In 2011, we acquired five brands from Blacksmith and acquired *Dramamine*. Prior to these three acquisitions, our last acquisition was the *Wartner* brand of OTC wart treatment products in 2007. While we believe that there will continue to be a pipeline of acquisition candidates for us to investigate, strategic fit and relative cost are of the utmost importance in our decision to pursue such opportunities. We believe our business model allows us to integrate acquisitions in an

efficient manner, while also providing opportunities to realize significant cost savings. However, there is a risk that our operating results could be adversely affected in the event we (i) do not realize all of the anticipated operating synergies and cost savings from acquisitions, (ii) do not successfully integrate acquisitions or (iii) pay too much for these acquisitions. In the past, we utilized various debt offerings to help us acquire certain brands or businesses. For example, in 2012, we completed an offering of senior notes, entered into new senior secured term loan and revolving credit facilities and ratably secured our existing senior notes with the new term loan facility. We used the net proceeds from the senior notes offering, together with borrowings under the new senior secured term loan facility, to finance the acquisition of the 17 OTC brands acquired from GSK, to repay our existing senior secured credit facilities, to pay fees and expenses incurred in connection with these transactions and for general corporate purposes. In 2010, we refinanced our long-term debt and significantly improved our liquidity position, debt maturities and covenants, all of which better positioned us to pursue the Blacksmith and *Dramamine* acquisitions and potential future acquisition targets.

Market Position

During 2012, approximately 67.0% of our net revenues were from brands with a number one or number two market position, compared with approximately 73.0% and 76.3% during 2011 and 2010, respectively. These brands were *Chloraseptic*, *Clear Eyes*, *Chore Boy*, *Comet*, *Compound W*, *The Doctor's*, *Murine* and *New-Skin* for each of the above periods as well as *Dramamine* and *Efferdent* in 2011 and 2012 and *BC/Goody's*, *Beano*, *Debrox* and *Gaviscon* in 2012.

See "Major Brands" above for information regarding market share and ACV calculations.

Our History and Accomplishments

We were originally formed in 1996 as a joint venture of Medtech Labs and The Shansby Group (a private equity firm), to acquire certain OTC drug brands from American Home Products. Since 2001, our portfolio of brand name products has expanded from OTC brands to include household cleaning products. We have added brands to our portfolio principally by acquiring strong and well-recognized brands from larger consumer products and pharmaceutical companies. In February 2004, GTCR Golder Rauner II, LLC ("GTCR"), a private equity firm, acquired our business from the owners of Medtech Labs and The Shansby Group. In addition, we acquired the *Spic and Span* business in March 2004.

In April 2004, we acquired Bonita Bay Holdings, Inc. ("Bonita Bay"), the parent holding company of Prestige Brands International, Inc., which conducted its business under the "Prestige" name. After we completed the Bonita Bay acquisition, we began to conduct our business under the "Prestige" name as well. The Bonita Bay brand portfolio included *Chloraseptic*, *Comet*, *Clear Eyes* and *Murine*.

In October 2004, we acquired the *Little Remedies* brand of pediatric OTC products through our purchase of Vetco, Inc. Products offered under the *Little Remedies* brand included *Little Noses*® nasal products, *Little Tummys*® digestive health products, *Little Colds*® cough/cold remedies and *Little Remedies* New Parents Survival Kit.

In February 2005, we raised \$448.0 million through an initial public offering of 28.0 million shares of common stock. We used the net proceeds of the offering (\$416.8 million), plus \$3.0 million from our revolving credit facility and \$8.8 million of cash on hand to (i) repay \$100.0 million of our existing senior indebtedness, (ii) redeem \$84.0 million in aggregate principal amount of our existing 9.25% senior subordinated notes, (iii) repurchase an aggregate of 4.7 million shares of our common stock held by the investment funds affiliated with GTCR and TCW/Crescent Mezzanine, LLC ("TWC/Crescent") for \$30.2 million, and (iv) redeem all outstanding senior preferred units and class B preferred units of one of our subsidiaries for \$199.8 million.

In October 2005, we acquired the *Chore Boy* brand of metal cleaning pads, scrubbing sponges, and non-metal soap pads. The brand has over 84 years of history in the scouring pad and cleaning accessories categories.

In November 2005, we acquired Dental Concepts LLC ("Dental Concepts"), a marketer of therapeutic oral care products sold under *The Doctor's* brand. The business is driven primarily by two niche segments, bruxism (nighttime teeth grinding) and interdental cleaning. Products marketed under *The Doctor's* brand include *The Doctor's NightGuard* Dental Protector, the first Food and Drug Administration ("FDA") cleared OTC treatment for bruxism, and *The Doctor's BrushPicks*, disposable interdental toothpicks.

In September 2006, we acquired Wartner USA B.V. ("Wartner"), the owner of the *Wartner* brand of OTC wart treatment products in the U.S. and Canada. The *Wartner* brand, which is the number three brand in the U.S. OTC wart treatment category, has enhanced and we expect will continue to enhance our market position in the category, complementing *Compound W*.

On October 28, 2009, we sold our three shampoo brands - *Prell* Shampoo, *Denorex* Dandruff Shampoo and *Zincon* Dandruff Shampoo. The terms of the sale included an upfront receipt of \$8.0 million in cash, with a subsequent receipt of \$1.0 million on October 28, 2010. We used the proceeds from the sale to reduce outstanding bank indebtedness. The operating results of *Denorex*, *Prell*, and *Zincon* are presented as discontinued operations in the Consolidated Financial Statements for the year ended March 31, 2010.

In March 2010, we refinanced our outstanding long-term indebtedness through entry into a \$150.0 million senior term loan facility due April 1, 2016 (the "2010 Senior Term Loan"), and the issuance of \$150.0 million in senior notes with an 8.25% interest rate due 2018. Proceeds from the new indebtedness were used to retire our senior term loan facility originally due April 1, 2011 and 9.25% senior subordinated notes originally due April 15, 2012. Additionally, our new credit agreement included a \$30.0 million revolving credit facility due April 1, 2015. The refinancing and new credit facility improved our liquidity, extended maturities and improved covenant ratios, all of which better positioned us to pursue strategic acquisitions.

On September 1, 2010, we sold certain assets related to the *Cutex* nail polish remover brand for \$4.1 million. The operating results of *Cutex* are presented as discontinued operations in the Consolidated Financial Statements for the years ended March 31, 2011 and 2010.

On November 1, 2010, we acquired 100% of the capital stock of Blacksmith for \$190.0 million in cash, plus a working capital adjustment of \$13.4 million. Additionally, we paid \$1.1 million on behalf of Blacksmith for the sellers' transaction costs. As a result of this acquisition, we acquired five OTC brands: *Efferdent*, *Effergrip*, *PediaCare*, *Luden's* and *NasalCrom*. In connection with the acquisition of Blacksmith, in November 2010, we (i) executed an Increase Joinder to our existing credit agreement pursuant to which we entered into an incremental term loan in the amount of \$115.0 million and increased our revolving credit facility by \$10.0 million to \$40.0 million; and (ii) issued 8.25% senior notes due 2018 in an aggregate principal amount of \$100.0 million. The purchase price was funded from the incremental term loan and the issuance of 8.25% senior notes and cash on hand.

On January 6, 2011, we completed the acquisition of certain assets comprising the *Dramamine* brand in the United States for \$77.1 million in cash, including transaction costs incurred in the acquisition of \$1.2 million. The purchase price was funded by cash on hand. The *Dramamine* brand is complementary to our existing OTC brands.

On January 31, 2012, we completed the acquisition of the 15 GSK Brands I, including the related contracts, trademarks and inventory for \$615.0 million in cash, subject to a post-closing inventory and apportionment adjustment. The GSK Brands I include *BC*, *Goody's* and *Ecotrin* brands of pain relievers; *Beano*, *Gaviscon*, *Phazyme*, *Tagamet* and *Fiber Choice* gastrointestinal brands; and the *Sominex* sleep aid brand. On March 30, 2012, we completed the acquisition of the two GSK Brands II in the United States, including the related contracts, trademarks and inventory, for \$45.0 million in cash, subject to a post-closing inventory adjustment. The GSK Brands II include *Debrox* and *Gly-Oxide*.

On January 31, 2012, in connection with the completed acquisition of the GSK Brands I, we (i) issued 8.125% senior notes due in 2020 in an aggregate principal amount of \$250.0 million (the "2012 Senior Notes"), and (ii) entered into a new senior secured credit facility, which consists of a \$660.0 million term loan facility with a seven-year maturity (the "2012 Term Loan") and a \$50.0 million asset-based revolving credit facility with a five-year maturity (the "2012 ABL Revolver"). Additionally, in connection with the entry into the new senior secured credit facilities, we repaid the outstanding balance and terminated our 2010 Senior Term Loan.

Products

We conduct our operations through two principal business segments:

- Over-the-Counter Healthcare; and
- Household Cleaning.

Over-the-Counter Healthcare Segment

Our portfolio of OTC Healthcare products includes 14 core brands including four from the GSK acquisition. Our core OTC brands are: *Chloraseptic* sore throat remedies, *Clear Eyes* eye drops, *Compound W* wart removers, *Little Remedies* pediatric healthcare products, *The Doctor's* brand of oral care products, *Efferdent* and *Effergrip* denture products, *Luden's* cough drops, *PediaCare* pediatric healthcare products, *Dramamine* motion sickness products, *BC* and *Goody's* Analgesic powders, *Beano* gas prevention, *Gaviscon* antacids and *Debrox* ear drops. Our other significant brands include *Dermoplast* first-aid products, *Murine* eye and ear care products, *NasalCrom* allergy relief product, *New-Skin* liquid bandage, and *Wartner* wart removers. In 2012, the OTC Healthcare segment accounted for 78.2% of our net revenues compared to 69.7% and 62.2% in 2011 and 2010, respectively.

Chloraseptic

Chloraseptic was originally developed by a dentist in 1957 to relieve sore throats and mouth pain. *Chloraseptic's* 6 oz. cherry liquid sore throat spray is the number one selling product in the sore throat liquids/sprays segment. The *Chloraseptic* brand has an ACV of 87.9% and is number one in sore throat liquids/lozenges with a 42.8% market share.

Clear Eyes

Clear Eyes, with an ACV of 88.1%, has been marketed as an effective eye care product that helps take redness away and helps moisturize the eye. *Clear Eyes* is among the leading brands in the OTC personal eye care category. The 0.5 oz. size of *Clear Eyes* redness relief eye drops is the number two selling product in the eye allergy redness relief category and *Clear Eyes* is the number two brand in that category with 17.2% market share.

Compound W

Compound W has a long heritage, with its wart removal products having been introduced almost 50 years ago. *Compound W* products are specially designed to provide relief from common and plantar warts and are sold in multiple forms of treatment depending on the consumer's need, including Fast-Acting Liquid, Fast-Acting Gel, One Step Pads for Kids, One Step Pads for Adults and *Freeze Off*®, a cryogenic-based wart removal system. We believe that *Compound W* is one of the most trusted names in wart removal. *Compound W* is the number two wart removal brand in the United States with a 35.9% market share and an ACV of 91.8%.

Dramamine

Dramamine is the number one brand in the \$52.4 million Motion Sickness Tablets category with a 37.4% market share and distribution of over 94.4% ACV. The product line includes a Less Drowsy formula and Chewable form in addition to the top selling *Dramamine* original product.

Efferdent and Effergrip

Efferdent Denture Cleanser holds a 30.3% share and the number two position in the \$75.8 million Denture Cleanser Tablets category. The January 2011 introduction of *Efferdent PM* extended the brand into the growing overnight cleanser segment. *Efferdent* enjoys distribution of over 93.9% ACV. *Effergrip* denture adhesive competes in the \$143.9 million adhesives category and holds a 0.9% share of the market.

Little Remedies

Little Remedies is a full line of pediatric OTC products that contain no alcohol, saccharin, artificial flavors or coloring dyes including: (i) *Little Noses*, a product line consisting of an assortment of nasal saline products, (ii) *Little Colds*, a product line consisting of a multi-symptom cold relief formula, sore throat relief products, a cough relief formula, a decongestant and a combined decongestant plus cough relief formula, (iii) *Little Tummys*, a product line consisting of gas relief drops, laxative drops and gripe water, an herbal supplement used to ease discomfort often associated with colic and hiccups, and (iv) *Little Teethers*, a product line offering teething relief.

Luden's

Luden's throat drops heritage spans more than 120 years. Among the fastest growing brands in the \$338.3 million cough drops category, *Luden's* has a 6.7% share of the market and distribution of more than 96.8% ACV. *Luden's* Wild Cherry is the number one selling item in the cough drop category, and a Sugar Free line extension was launched in 2011.

PediaCare

PediaCare is a full line of pediatric multi-symptom cough, cold and allergy products. In 2011, the brand launched a comprehensive line of pain relievers and fever reducers for both children and infants in addition to a new 24 Hour Allergy Relief offering. *PediaCare* currently holds a 5.5% share of the market and the number three position in the \$661.0 million Pediatric Healthcare market. All *PediaCare* products combined have distribution of 87.5% ACV.

The Doctor's

The Doctor's is a line of products designed to help consumers maintain good oral hygiene in between dental office visits. The market is driven primarily by two niche segments: bruxism (nighttime teeth grinding) and interdental cleaning. *The Doctor's NightGuard* dental protector was the first FDA cleared OTC treatment for bruxism.

BC/Goody's

BC and *Goody's* compete in the \$1,970.8 million Adult Analgesic category (FDMx). They are the number one OTC pain relievers in a powder form. Developed in the Southeast region over 80 years ago, their unique form delivers fast pain relief. The combined brands have a 1.7% share in FDMx nationally, but are the number one adult analgesic in Southeast Convenience stores (AC Nielsen). *BC* is available in Original and Arthritis formulas. *Goody's* includes Extra Strength, Back & Body, PM and Cool Orange.

Beano

Beano commands over 85.0% of the gas prevention segment and the number one overall position in the \$168.1 million anti-gas category. The product is formulated with a unique digestive enzyme that works naturally with the body to prevent gas symptoms before they start. In 2010, the brand developed a proprietary delivery system and launched *Beano Meltaways*, a dissolvable tablet that fills the consumer need for a more discreet way to manage the condition. *Beano* enjoys distribution across the food, drug, mass merchandiser and wholesale club channels.

Debrox

Debrox is the number one brand of OTC ear wax removal aids, with a 28.3% share of the ear drops and treatments category. The product line consists of two sale items: an ear wax removal kit containing liquid drops and an ear washer bulb, and a second item containing just the liquid drops as a refill. With *Debrox*, consumers have a safe, gentle method for removing ear wax build up while in the privacy of their homes. *Debrox* is the number one trusted brand with doctors and pharmacists, and is their number one choice for a recommended treatment to their patients with ear wax build up.

Gaviscon

Gaviscon is currently the number two brand in the \$136.5 million Canadian upset stomach remedy category with a 15.8% market share. The brand grew more than 14.0% in 2011. *Gaviscon's* success is attributed to a differentiated method of action versus traditional antacid products, as it creates a foam barrier to inhibit stomach acid from backing up into the esophagus. *Gaviscon* is widely distributed throughout Canadian food, drug, mass merchandise and wholesale clubs.

Household Cleaning Segment

Our portfolio of Household Cleaning brands includes the *Chore Boy*, *Comet* and *Spic and Span* brands. During 2012, the Household Cleaning segment accounted for 21.8% of our revenues, compared with 30.3% and 37.8% in 2011 and 2010, respectively.

Chore Boy

Chore Boy scrubbing pads and sponges were initially launched in the 1920s. Over the years, the line has grown to include metal and non-metal scrubbers that are used for a variety of household cleaning tasks. *Chore Boy* products are currently sold in food and drug stores, mass merchandisers, and in hardware and convenience stores.

Comet

Comet was originally introduced in 1956 and is one of the most widely recognized Household Cleaning brands with an ACV of 98.8%. *Comet* competes in the abrasive and non-abrasive tub and tile cleaner sub-category of the Household Cleaning category that includes abrasive powders, creams, liquids and non-abrasive sprays. *Comet* products include several varieties of cleaning powders, spray and cream, both abrasive and non-abrasive.

Spic and Span

Spic and Span was introduced in 1925 and is marketed as the complete home cleaner with three product lines consisting of (i) dilutables, (ii) an anti-bacterial hard surface spray for counter tops and (iii) glass cleaners. Each of these products can be used for multi-room and multi-surface cleaning.

For additional information concerning our business segments, please refer to Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and Note 18 to the Consolidated Financial Statements included elsewhere in this Annual Report on Form 10-K.

Marketing and Sales

Our marketing strategy is based upon the acquisition and the rejuvenation of established consumer brands that possess what we believe to be significant brand value and unrealized potential. Our marketing objective is to increase sales and market share by developing innovative new products and line extensions and executing professionally designed, creative and cost-effective advertising and promotional programs. After we acquire a brand, we implement a brand building strategy that uses the brand's existing consumer awareness to maximize sales of current products and provides a vehicle to drive growth through product innovation. This brand building process involves the evaluation of the existing brand name, the development and introduction of innovative new products and the execution of professionally designed support programs. Recognizing that financial resources are limited, we allocate our resources to focus on our core brands, which we believe have the greatest opportunities for growth and financial success. Brand priorities vary from year to year and generally revolve around new product introductions.

Customers

Our senior management team and dedicated sales force strive to maintain long-standing relationships with our top 50 domestic customers, which accounted for approximately 69.5%, 74.4% and 79.6% of our combined gross sales for 2012, 2011 and 2010, respectively. Our sales management team has grown to 42 people in order to focus on our key customer relationships. We also contract with third-party sales management enterprises that interface directly with our remaining customers and report directly to members of our sales management team.

We enjoy broad distribution across each of the major retail channels, including mass merchandisers, drug, food, dollar and club stores. The following table sets forth the percentage of gross sales across our five major distribution channels during each of the three years ended March 31:

Channel of Distribution	Percentage of Gross Sales ⁽¹⁾		
	2012	2011	2010
<i>Mass</i>	33.2	33.0	34.9
<i>Food</i>	21.1	21.8	21.0
<i>Drug</i>	25.8	25.0	24.1
<i>Dollar</i>	9.4	9.8	10.7
<i>Club</i>	2.3	2.3	2.3
<i>Other</i>	8.2	8.1	7.0

(1) Includes estimates for some of our wholesale customers that service more than one distribution channel.

Due to the diversity of our product line, we believe that each of these channels is important to our business and we continue to seek opportunities for growth in each channel.

Our principal customer relationships include Walmart, Walgreens, CVS, Target and Dollar Tree. Sales to our top five and ten customers accounted for approximately 40.0% and 50.1% of total gross sales, respectively, in 2012 compared with approximately 41.7% and 53.0%, respectively, in 2011 and approximately 45.6% and 57.3%, respectively, in 2010. No single customer other than Walmart accounted for more than 10% of our gross sales in any of those years and none of our other top five customers accounted for less than 3% of our gross sales in any of those years. During 2012, 2011 and 2010, Walmart accounted for approximately 18.9%, 20.3% and 24.4%, respectively, of our gross revenues.

Our strong customer relationships and product recognition provide us with a number of important opportunities including (i) minimization of slotting fees, (ii) maximization of new product introductions, (iii) maximization of shelf space prominence and (iv) minimization of cash collection days. We believe that management's emphasis on strong customer relationships, speed and flexibility and leading sales technology capabilities, combined with consistent marketing support programs and ongoing product innovation, will continue to maximize our competitiveness in the increasingly complex retail environment.

The following table sets forth a list of our primary distribution channels and our principal customers for each channel:

Distribution Channel	Customers	Distribution Channel	Customers
<i>Mass</i>	Kmart	<i>Drug</i>	CVS
	Meijer		Rite Aid
	Target		Walgreens
	Walmart	<i>Dollar</i>	Dollar General
<i>Food</i>	Ahold		Dollar Tree
	Kroger		Family Dollar
	Publix	<i>Club</i>	BJ's Wholesale Club
Safeway	Costco		
Supervalu	Sam's Club		

Outsourcing and Manufacturing

In order to maximize our competitiveness and efficiently allocate our resources, third-party manufacturers fulfill all of our manufacturing needs. We have found that contract manufacturing maximizes our flexibility and responsiveness to industry and consumer trends while minimizing the need for capital expenditures. We select contract manufacturers based on their core competencies and our perception of the best overall value, including factors such as (i) depth of services, (ii) professionalism and integrity of the management team, (iii) manufacturing agility and capacity, (iv) regulatory compliance and (v) competitive pricing. We also conduct thorough reviews of each potential manufacturer's facilities, quality standards, capacity and financial stability. We generally purchase only finished products from our manufacturers.

Our primary contract manufacturers provide comprehensive services from product development through the manufacturing of finished goods. They are responsible for such matters as (i) production planning, (ii) product research and development, (iii) procurement, (iv) production, (v) quality testing, and (vi) almost all capital expenditures. In most instances, we provide our contract manufacturers with guidance in the areas of (i) product development, (ii) performance criteria, (iii) regulatory guidance, (iv) sourcing of packaging materials and (v) monthly master production schedules. This management approach results in minimal capital expenditures and maximizes our cash flow, which allows us to reinvest to support our marketing initiatives, fund brand acquisitions or repay outstanding indebtedness.

At March 31, 2012, we had relationships with 42 third-party manufacturers. Of those, we had long-term contracts with 20 manufacturers that produced items that accounted for approximately 70.6% of our gross sales for 2012 compared to 11 manufacturers with long-term contracts that accounted for approximately 52.9% of our gross sales in 2011. The fact that we do not have long-term contracts with certain manufacturers means that they could cease manufacturing these products at any time and for any reason, or initiate arbitrary and costly price increases which could have a material adverse effect on our business, financial condition and results from operations.

At March 31, 2012, suppliers for our key brands included (i) GlaxoSmithKline, (ii) Fitzpatrick Bros. Inc., (iii) Aspen Pharmacare, (iv) Pharma Tech Industries, (v) BestSweet, Inc., and (vi) Aaron Industries, Inc. We enter into manufacturing agreements for a majority of our products by sales volume, each of which vary based on the capabilities of the third-party manufacturer and the products being supplied. These agreements explicitly outline the manufacturer's obligations and product specifications with respect to the brand or brands being produced. The purchase price of products under these agreements is subject to change pursuant to the terms of these agreements due to fluctuations in raw material, packaging and labor costs. Other products are manufactured on a purchase order basis which is generally based on batch sizes and results in no long-term obligations or commitments.

Warehousing and Distribution

We receive orders from retailers and/or brokers primarily by electronic data interchange, which automatically enters each order into our computer systems and then routes the order to our distribution center. The distribution center will, in turn, send a confirmation that the order was received, fill the order and ship the order to the customer, while sending a shipment confirmation to us. Upon receipt of the confirmation, we send an invoice to the customer.

We manage product distribution in the mainland United States primarily through one facility located in St. Louis, which is owned and operated by a third-party provider. Our warehouse provider provides warehouse services with respect to our full line of products, including storage, handling and shipping, as well as transportation services with respect to our full line of products, including, (i) complete management services, (ii) claims administration, (iii) proof of delivery, (iv) procurement, (v) report generation, and (vi) automation and freight payment services.

If our warehouse provider abruptly stopped providing warehousing or transportation services to us, our business operations could suffer a temporary disruption while new service providers are engaged. We believe this process could be completed quickly and any resulting temporary disruption would not be likely to have a significant effect on our operating results or financial condition. However, a serious disruption, such as a flood or fire, to our distribution center could damage our inventory and could materially impair our ability to distribute our products to customers in a timely manner or at a reasonable cost. We could incur significantly higher costs and experience longer lead times associated with the distribution of our products to our customers during the time required to reopen or replace our distribution center. As a result, any such serious or prolonged disruption could have a material adverse effect on our business, financial condition and results from operations.

Competition

The business of selling brand name consumer products in the OTC Healthcare and Household Cleaning categories is highly competitive. These markets include numerous national and global manufacturers, distributors, marketers and retailers that actively

compete for consumers' business both in the United States and abroad. Many of these competitors are larger and have substantially greater research and development and financial resources than we do. Consequently, they may have the ability to spend more aggressively on advertising and marketing and research and development, and to respond more effectively to changing business and economic conditions. If this were to occur, our sales, operating results and profitability could be adversely affected. In addition, we are experiencing increased competition from "private label" products introduced by major retail chains. While we believe that our branded products provide superior quality and benefits, we are unable to predict the extent to which our consumers will purchase "private label" products as an alternative to branded products.

Our principal competitors vary by industry category. Competitors in the OTC Healthcare category include: Johnson & Johnson, maker of Visine®, which competes with our *Clear Eyes* and *Murine* brands; McNeil-PPC (owned by Johnson & Johnson), maker of Children's Tylenol® and Novartis Consumer Healthcare, maker of Triaminic®, each of which competes with our *PediaCare* and *Little Remedies* brands; The Procter & Gamble Company, maker of Vicks®, and Reckitt Benckiser, maker of Cepacol®, each of which competes with our *Chloraseptic* brand; Kraft Foods, maker of Halls®, which competes with our *Luden's* brand; The Procter & Gamble Company, maker of Fixodent®, and GlaxoSmithKline, maker of Polident®, each of which competes with our *Efferdent* brand; and Insight Pharmaceuticals, Inc., maker of Bonine®, which competes with our *Dramamine* brand. Sunstar America, Inc., maker of the GUM® line of oral care products, as well as DenTek® Oral Care, Inc., which markets a dental protector for nighttime teeth grinding and interdental toothpicks, competes with our *The Doctor's* oral care brand.

Top competitors in our newly acquired OTC Healthcare categories include: McNeil-PPC (owned by Johnson & Johnson), maker of Tylenol®, Pfizer, maker of Advil® and Novartis Consumer Healthcare, maker of Excedrin®, each of which compete with our *BC*, *Goody's* and *Ecotrin* brands; the Procter & Gamble Company, maker of Metamucil®, which competes with our *Fiber Choice* brand; Novartis Consumer Healthcare, maker of Gas X®, which competes with our *Beano* brand; and GSK, maker of Tums®, which competes with our *Gaviscon* and *Tagamet* brands.

Competitors in the Household Cleaning category include: Henkel AG & Co., maker of Soft Scrub®, Colgate-Palmolive Company, maker of Ajax® Cleanser, and The Clorox Company, maker of Tilex®, each of which competes with our *Comet* brand. Additionally, Clorox's Pine Sol® and The Procter & Gamble Company's Mr. Clean® compete with our *Spic and Span* brand, while 3M Company, maker of Scotch-Brite®, O-Cel-O® and Dobie® brands, and Clorox's SOS®, compete with our *Chore Boy* brand.

We compete on the basis of numerous factors, including brand recognition, product quality, performance, price and product availability at the retail level. Advertising, promotion, merchandising and packaging, the timing of new product introductions and line extensions also have a significant impact on customers' buying decisions and, as a result, on our sales. The structure and quality of our sales force, as well as sell-through of our products, affects in-store position, wall display space and inventory levels in retail outlets. If we are unable to maintain the inventory levels and in-store positioning of our products in retail stores, our sales and operating results will be adversely affected. Our markets are also highly sensitive to the introduction of new products, which may rapidly capture a significant share of the market. An increase in the amount of new product introductions and the levels of advertising spending by our competitors could have a material adverse effect on our business, financial condition and results from operations.

Many of the competitors noted above are larger and have substantially greater resources than we do, and may therefore have the ability to spend more aggressively on research and development, advertising and marketing, and to respond more effectively to changing business and economic conditions. See "Competitive Strengths" above for additional information regarding our competitive strengths and "Risk Factors" below for additional information regarding competition in our industry.

Regulation

Product Regulation

The formulation, manufacturing, packaging, labeling, distribution, importation, sale and storage of our products are subject to extensive regulation by various federal agencies, including the FDA, the Federal Trade Commission ("FTC"), the Consumer Product Safety Commission ("CPSC"), and the Environmental Protection Agency ("EPA"), and various agencies of the states, localities and foreign countries in which our products are manufactured, distributed and sold. Our Regulatory Team is guided by a senior member of management and staffed by individuals with appropriate legal and regulatory experience. Our Regulatory and Operations teams work closely with our third-party manufacturers on quality-related matters while we monitor their compliance with FDA regulations and perform periodic audits to ensure compliance. This continual evaluation process is designed to ensure that our manufacturing processes and products are of the highest quality and in compliance with known regulatory requirements. If the FDA chooses to audit a particular manufacturing facility, we require the third-party manufacturer to notify us immediately and update us on the progress of the audit as it proceeds. If we or our manufacturers fail to comply with applicable regulations, we

could become subject to significant claims or penalties or be required to discontinue the sale of the non-compliant product, which could have a material adverse effect on our business, financial condition and results from operations. In addition, the adoption of new regulations or changes in the interpretations of existing regulations may result in significant additional compliance costs or discontinuation of product sales and may also have a material adverse effect on our business, financial condition and results from operations.

Most of our OTC drug products are regulated pursuant to the FDA's monograph system. The monographs set out the active ingredients and labeling indications that are permitted for certain broad categories of OTC drug products. When the FDA has finalized a particular monograph, it has concluded that a properly labeled product formulation is generally recognized as safe and effective and not misbranded. A tentative final monograph indicates that the FDA has not made a final determination about products in a category to establish safety and efficacy for a product and its uses. However, unless there is a serious safety or efficacy issue, the FDA typically will exercise enforcement discretion and permit companies to sell products conforming to a tentative final monograph until the final monograph is published. Products that comply with either final or tentative final monograph standards do not require pre-market approval from the FDA.

Certain of our OTC drug products are Abbreviated New Drug Applications ("ANDA") products and are manufactured and labeled in accordance with a FDA-approved submission. These products are subject to reporting requirements as set forth in FDA regulations.

Certain of our OTC Healthcare products are medical devices regulated by the FDA through a system which usually involves pre-market clearance. During the review process, the FDA makes an affirmative determination as to the sufficiency of the label directions, cautions and warnings for the medical devices in question.

In accordance with the Federal Food, Drug and Cosmetic Act ("FDCA") and FDA regulations, the Company and its drug and device manufacturers must also comply with the FDA's current Good Manufacturing Practices ("GMPs"). The FDA inspects our facilities and those of our third-party manufacturers periodically to determine that both the Company and our third-party manufacturers are complying with GMPs.

A number of our products are regulated by the CPSC under the Federal Hazardous Substances Act (the "FHSA"), the Poison Prevention Packaging Act of 1970 (the "PPPA") and the Consumer Products Safety Improvement Act of 2008 (the "CPSIA"). Certain of our household products are considered to be hazardous substances under the FHSA and therefore require specific cautionary warnings to be included in their labeling for such products to be legally marketed. In addition, a small number of our products are subject to regulation under the PPPA and can only be legally marketed if they are dispensed in child-resistant packaging or labeled for use in households where there are no children. The CPSIA requires us to make available to our customers certificates stating that we are in compliance with any applicable regulation administered by the CPSC.

Certain of our Household Cleaning products are considered pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). Generally speaking, any substance intended for preventing, destroying, repelling, or mitigating any pest is considered to be a pesticide under FIFRA. We market and distribute certain household products under our *Comet* and *Spic and Span* brands which make antibacterial and/or disinfectant claims governed by FIFRA. Due to the antibacterial and/or disinfectant claims on certain of the *Comet* and *Spic and Span* products, such products are considered to be pesticides under FIFRA and are required to be registered with the EPA and contain certain disclosures on the product labels. In addition, the contract manufacturers from which we source these products must be registered with the EPA. Our *Comet* and *Spic and Span* products that make antibacterial and/or disinfectant claims are also subject to state regulations and the rules and regulations of the various jurisdictions where these products are sold.

Other Regulations

We are also subject to a variety of other regulations in various foreign markets, including regulations pertaining to import/export regulations and antitrust issues. To the extent we decide to commence or expand operations in additional countries, we may be required to obtain an approval, license or certification from the country's ministry of health or comparable agency. We must also comply with product labeling and packaging regulations that may vary from country to country. Government regulations in both our domestic and international markets can delay or prevent the introduction, or require the reformulation or withdrawal, of some of our products. Our failure to comply with these regulations can result in a product being removed from sale in a particular market, either temporarily or permanently. In addition, we are subject to FTC and state regulations, as well as foreign regulations, relating to our product claims and advertising. If we fail to comply with these regulations, we could be subject to enforcement actions and the imposition of penalties which could have a material adverse effect on our business, financial condition and results from operations.

Intellectual Property

We own a number of trademark registrations and applications in the United States, Canada and other foreign countries. The following are some of the most important registered trademarks we own in the United States and/or Canada: *Chloraseptic*, *Chore Boy*, *Cinch*®, *Clear Eyes*, *Comet*, *Compound W*, *Dermoplast*, *Dramamine*, *Efferdent*, *Effergrip*, *Freeze Off*, *Little Remedies*, *Longlast*®, *Luden's*, *Momentum*®, *Murine*, *NasalCrom*, *New-Skin*, *PediaCare*, *Percogesic*®, *Spic and Span*, *The Doctor's Brushpicks*, *The Doctor's NightGuard*, *Wartner*, *BC*, *Goody's*, *Ecotrin*, *Beano*, *Gaviscon*, *Phazyme*, *Tagamet*, *Fiber Choice*, *Sominex*, *Debrox* and *Gly-Oxide*.

Our trademarks and trade names are how we convey that the products we sell are "brand name" products. Our ownership of these trademarks and trade names is very important to our business, as it allows us to compete based on the value and goodwill associated with these marks. We may also license others to use these marks. Additionally, we own or license patents on innovative and proprietary technology. The patents evidence the unique nature of our products, provide us with exclusivity and afford us protection from the encroachment of others. None of the patents that we own or license, however, is material to us on a consolidated basis. Enforcing our rights, or the rights of any of our licensors, represented by these trademarks, trade names and patents is critical to our business, but is expensive. If we are not able to effectively enforce our rights, others may be able to dilute our trademarks, trade names and patents and diminish the value associated with our brands and technologies, which could have a material adverse effect on our business, financial condition and results from operations.

We do not own all of the intellectual property rights applicable to our products. In those cases where our third-party manufacturers own patents that protect our products, we are dependent on them as a source of supply for our products. Unless other non-infringing technologies are available, we must continue to purchase patented products from our suppliers who sell patented products to us. In addition, we rely on our suppliers for their enforcement of their intellectual property rights against infringing products.

We have licensed to The Procter & Gamble Company the right to use the *Comet*, *Spic and Span* and *Chlorinol*® trademarks in the commercial/institutional/industrial segment in the United States and Canada until 2019. We have also licensed to The Procter & Gamble Company the *Comet* and *Chlorinol* brands in Russia and specified Eastern European countries until 2015.

Seasonality

The first quarter of our fiscal year typically has the lowest level of revenue due to the seasonal nature of certain of our brands relative to the summer and winter months. In addition, the first quarter generally is the least profitable quarter due to the increased advertising and promotional spending to support those brands with a summer selling season, such as *Clear Eyes* products, *Compound W*, *Wartner* and *New-Skin*. The level of advertising and promotional campaigns in the third quarter influences sales of our cough/cold products such as *Chloraseptic*, *Little Remedies*, *Luden's* and *PediaCare* during the fourth quarter cough/cold winter months. Additionally, the fourth quarter typically has the lowest level of advertising and promotional spending as a percent of revenue.

Employees

We employed approximately 105 full time individuals at March 31, 2012. None of our employees is a party to a collective bargaining agreement. Management believes that our relations with our employees are good.

Backlog Orders

We had no backlog orders at March 31, 2012 or 2011.

Available Information

Our Internet address is www.prestigebrands.com. We make available free of charge on or through our Internet website our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports, and the Proxy Statement for our annual stockholders' meetings, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (the "SEC"). Information on our Internet website does not constitute a part of this Annual Report on Form 10-K and is not incorporated herein by reference, including any general statement incorporating by reference this Annual Report on Form 10-K into any filing under the Securities Act of 1933, as amended (the "Securities Act"), or under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

You may read and copy any materials that we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site (<http://www.sec.gov>) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC.

We have adopted a Code of Conduct Policy, Code of Ethics for Senior Financial Employees, Complaint Procedures for Accounting and Auditing Matters, Corporate Governance Guidelines, Audit Committee Pre-Approval Policy, and Charters for our Audit, Compensation and Nominating and Governance Committees, as well as a Related Persons Transaction Policy and Stock Ownership Guidelines. We will provide to any person without charge, upon request, a copy of the foregoing materials. Any requests for the foregoing documents from us should be made in writing to:

Prestige Brands Holdings, Inc.
90 North Broadway
Irvington, New York 10533
Attention: Secretary

We intend to disclose future amendments to the provisions of the foregoing documents, policies and guidelines and waivers therefrom, if any, on our Internet website and/or through the filing of a Current Report on Form 8-K with the SEC, to the extent required under the Exchange Act.

ITEM 1A. RISK FACTORS

The high level of competition in our industry, much of which comes from competitors with greater resources, could adversely affect our business, financial condition and results from operations.

The business of selling brand name consumer products in the OTC Healthcare and Household Cleaning categories is highly competitive. These markets include numerous manufacturers, distributors, marketers and retailers that actively compete for consumers' business both in the United States and abroad. Many of these competitors are larger and have substantially greater resources than we do, and may therefore have the ability to spend more aggressively on research and development, advertising and marketing, and to respond more effectively to changing business and economic conditions. If this were to occur, it could have a material adverse effect on our business, financial condition and results from operations.

Certain of our product lines that account for a large percentage of our sales have a small market share relative to our competitors. For example, while *Clear Eyes* has a number two market share position of 17.2% within the allergy/redness eye drop segment, its top competitor, *Visine*®, has a market share of 29.7% in the same segment. In contrast, certain of our brands with number two market positions have a similar market share relative to our competitors. For example, *Compound W* has a number two market position of 35.9% and its top competitor, *Dr. Scholl's*®, has a market position of 38.2% in the same category. Finally, while our *New-Skin* liquid bandage product has a number one market position of 56.3%, the size of the liquid bandage market is relatively small, particularly when compared to the much larger bandage category. See "Part I, Item 1. Business - Major Brands" of this Annual Report on Form 10-K for information regarding market share calculations.

We compete for customers' attention based on a number of factors, including brand recognition, product quality, performance, price and product availability at the retail level. Advertising, promotion, merchandising and packaging, the timing of new product introductions and line extensions also have a significant impact on consumer buying decisions and, as a result, on our sales. The structure and quality of our sales force, as well as sell-through of our products affect in-store position, wall display space and inventory levels in retail stores. If we are unable to maintain our current distribution network, inventory levels and in-store positioning of our products at our customers, our sales and operating results will be adversely affected. Our markets also are highly sensitive to the introduction of new products, which may rapidly capture a significant share of the market. An increase in the number of product innovations by our competitors or the failure of a new product launch by the Company could have a material adverse effect on our business, financial condition and results from operations.

In addition, competitors may attempt to gain market share by offering products at prices at or below those typically offered by us. Competitive pricing may require us to reduce prices which may result in lost sales or a reduction of our profit margins. Future price adjustments, product changes or new product introductions by our competitors or our inability to react with price adjustments, product changes or new product introductions of our own could result in a loss of market share which could have a material adverse effect on our business, financial condition and results from operations.

We depend on a limited number of customers with whom we have no long-term agreements for a large portion of our gross sales and the loss of one or more of these customers could reduce our gross sales and have a material adverse effect on our business, financial condition and results of operations.

For 2012, our top five and ten customers accounted for approximately 40.0% and 50.1%, respectively, of our sales, compared with approximately 41.7% and 53.0%, respectively for 2011 and 45.6% and 57.3%, respectively for 2010. Walmart, which itself accounted for approximately 18.9%, 20.3% and 24.4% of our sales in 2012, 2011 and 2010, respectively, is our only customer that accounted for 10% or more of our sales. We expect that for future periods, our top five and ten customers, including Walmart, will, in the aggregate, continue to account for a large portion of our sales. The loss of one or more of our top customers, any significant decrease in sales to these customers, or a significant decrease in our retail display space in any of these customers' stores, could reduce our sales and have a material adverse effect on our business, financial condition and results from operations.

In addition, our business is based primarily upon individual sales orders. We typically do not enter into long-term contracts with our customers. Accordingly, our customers could cease buying products from us at any time and for any reason. The fact that we do not have long-term contracts with our customers means that we have no recourse in the event a customer no longer wants to purchase products from us. If a significant number of our smaller customers, or any of our significant customers, elect not to purchase products from us, our business, financial condition and results from operations could be adversely affected.

Our business has been and could continue to be adversely affected by a prolonged recession in the United States.

The economic uncertainty surrounding the current United States recession has affected and could continue to materially affect our business because such economic challenges could adversely affect consumers, our customers and suppliers. Specifically:

- Consumer spending may continue to be curtailed resulting in downward pressure on our sales;
- Our customers may continue to rationalize the number of products that reach store shelves resulting in a reduction of the number of products that are carried at retail, particularly those that are not number one or two in their category;
- Our customers may continue to reduce overall inventory levels to strengthen their working capital positions which could result in additional sales reductions for us during those periods that our customers implement such strategies;
- Our customers may continue to increase the number and breadth of products that are sold via their “private label” to the detriment of our branded products;
- Our customers may continue to rationalize store count, closing additional marginally performing stores resulting in sales reductions, potential working capital reductions, and an inability to repay amounts owed to us; and
- Our suppliers may suffer from sales reductions which could diminish their working capital and impede their ability to provide product to us in a timely manner.

We depend on third-party manufacturers to produce the products we sell. If we are unable to maintain these manufacturing relationships or fail to enter into additional relationships, as necessary, we may be unable to meet customer demand and our sales and profitability could suffer as a result.

All of our products are produced by third-party manufacturers. Our ability to retain our current manufacturing relationships and engage in and successfully transition to new relationships is critical to our ability to deliver quality products to our customers in a timely manner. Without adequate supplies of quality merchandise, sales would decrease materially and our business would suffer. In the event that our primary third-party manufacturers are unable or unwilling to ship products to us in a timely manner, we would have to rely on secondary manufacturing relationships or identify and qualify new manufacturing relationships. We might not be able to identify or qualify such manufacturers for existing or new products in a timely manner and such manufacturers may not allocate sufficient capacity to us in order that we may meet our commitments to customers. In addition, identifying alternative manufacturers without adequate lead times can compromise required product validation and stability protocol, which may involve additional manufacturing expense, delay in production or product disadvantage in the marketplace. One supplier, which the Company inherited in connection with the GSK acquisition, filed for bankruptcy protection. The Company is attempting to arrange for an alternative supplier, however, given the time required, we may be unable to fulfill our product needs for one of our brands sold internationally if the current supplier is unable to meet our needs. In general, the consequences of not securing adequate and timely supplies of merchandise would negatively impact inventory levels, sales and gross margins, and could have a material adverse effect on our business, financial condition and results from operations.

These manufacturers may also increase the cost of the products we purchase which could adversely affect our margins in the event we are unable to pass along these increased costs to our customers. A situation such as this could also have a material adverse effect on our business, financial condition and results from operations.

At March 31, 2012, we had relationships with 42 third-party manufacturers. Of those, we had long-term contracts with 20 manufacturers that produced items that accounted for approximately 70.6% of our gross sales for 2012 compared to 11 manufacturers with long-term contracts that produced approximately 52.9% of gross sales in 2011. The fact that we do not have long-term contracts with certain manufacturers means that they could cease manufacturing these products at any time and for any reason, or initiate arbitrary and costly price increases, either of which could have a material adverse effect on our business, financial condition and results from operations.

Price increases for raw materials, labor, energy and transportation costs could have an adverse impact on our margins.

The costs to manufacture and distribute our products are subject to fluctuation based on a variety of factors. Increases in commodity raw material (including resins) and packaging component prices and labor, energy and fuel costs could have a significant impact on our 2013 results from operations. Consequently, if we are unable to increase the price for our products or continue to achieve cost savings in a rising cost environment, such cost increases would reduce our gross margins and could have a material adverse effect on our results from operations. If we increase the price for our products in order to maintain gross margins for our products, such increase may adversely affect demand for, and sales of, our products which could have a material adverse effect on our financial condition and results of operations.

Disruption in our St. Louis distribution center may prevent us from meeting customer demand and our sales and profitability may suffer as a result.

We manage our product distribution in the continental United States through one primary distribution center in St. Louis, Missouri. A serious disruption, such as a flood or fire, to our primary distribution center could damage our inventory and could materially impair our ability to distribute our products to customers in a timely manner or at a reasonable cost. We could incur significantly higher costs and experience longer lead times during the time required to reopen or replace our primary distribution center. As a result, any serious disruption could have a material adverse effect on our business, financial condition and results from operations.

Achievement of our strategic objectives requires the acquisition, or potentially the disposition, of certain brands or product lines. Efforts to effect and integrate such acquisitions or dispositions may divert our managerial resources away from our business operations.

The majority of our growth has been driven by acquiring other brands and companies. At any given time, we may be engaged in discussions with respect to possible acquisitions that are intended to enhance our product portfolio, enable us to realize cost savings and further diversify our category, customer and channel focus. Our ability to successfully grow through acquisitions depends on our ability to identify, negotiate, complete and integrate suitable acquisition candidates and to obtain any necessary financing. These efforts could divert the attention of our management and key personnel from our business operations. If we complete acquisitions, we may also experience:

- Difficulties achieving, or an inability to achieve, our expected returns;
- Difficulties in integrating any acquired companies, suppliers, personnel and products into our existing business;
- Delays in realizing the benefits of the acquired company or products;
- Higher costs of integration than we anticipated;
- Difficulties in retaining key employees of the acquired business who are necessary to manage the business;
- Difficulties in maintaining uniform standards, controls, procedures and policies throughout our acquired companies; or
- Adverse customer or stockholder reaction to the acquisition.

In addition, any acquisition could adversely affect our operating results as a result of higher interest costs from the acquisition-related debt and higher amortization expenses related to the acquired intangible assets. The diversion of management's attention to pursue acquisitions, or our failure to successfully integrate acquired companies into our business, could have a material adverse effect on our business, financial condition and results from operations.

In the event that we decide to sell a brand or product line, we may encounter difficulty finding, or be unable to find, a buyer on acceptable terms in a timely manner. The pursuit of divestitures could divert management's attention from our business operations and result in a delay in our efforts to achieve our strategic objectives.

Our risks associated with doing business internationally increase as we expand our international footprint.

During 2012, 2011 and 2010, approximately 3.5%, 4.2% and 4.3%, respectively, of our total revenues were attributable to our international business. We generally rely on brokers and distributors for the sale of our products in foreign countries. In addition to the risks associated with political instability, changes in the outlook for economic prosperity in these countries could adversely affect the sales of our products in these countries. Other risks of doing business internationally include:

- Changes in the legislative or regulatory requirements of the countries or regions where we do business;
- Currency controls which restrict or prohibit the payment of funds or the repatriation of earnings to the United States;
- Fluctuating foreign exchange rates could result in unfavorable increases in the price of our products or cause increases in the cost of certain products purchased from our foreign third-party manufacturers;
- Regulatory oversight and its impact on our ability to get products registered for sale in certain markets;

- Potential trade restrictions and exchange controls;
- Inability to protect our intellectual property rights in these markets; and
- Increased costs of compliance with general business and tax regulations in these countries or regions.

Regulatory matters governing our industry could have a significant negative effect on our sales and operating costs.

In both our United States and foreign markets, we are affected by extensive laws, governmental regulations, administrative determinations, court decisions and similar constraints. Such laws, regulations and other constraints exist at the federal, state or local levels in the United States and at analogous levels of government in foreign jurisdictions.

The formulation, manufacturing, packaging, labeling, distribution, importation, sale and storage of our products are subject to extensive regulation by various federal agencies, including (i) the FDA, (ii) the FTC, (iii) the CPSC, (iv) the EPA, and by (v) various agencies of the states, localities and foreign countries in which our products are manufactured, distributed, stored and sold. If we or our third-party manufacturers fail to comply with those regulations, we could become subject to enforcement actions, significant penalties or claims, which could materially adversely affect our business, financial condition and results from operations. In addition, the adoption of new regulations or changes in the interpretations of existing regulations may result in significant compliance costs or the cessation of product sales and may adversely affect the marketing of our products, resulting in a significant loss of revenues which could have a material adverse effect on our business, financial condition and results from operations.

The FDC Act and FDA regulations require that the manufacturing processes of our third-party manufacturers must also comply with the FDA's GMPs. The FDA inspects our facilities and those of our third-party manufacturers periodically to determine if we and our third-party manufacturers are complying with GMPs. A history of past compliance is not a guarantee that future GMPs will not mandate other compliance steps and associated expense.

If we or our third-party manufacturers fail to comply with applicable federal, state, local or foreign regulations, we could be required to:

- Suspend manufacturing operations;
- Modify product formulations or processes;
- Suspend the sale of products with non-complying specifications; or
- Change product labeling, packaging or advertising or take other corrective action.

In addition, we could be required for a variety of reasons to initiate product recalls, which we have recently done on several occasions. Any of the foregoing actions could have a material adverse effect on our business, financial condition and results from operations.

In addition, our failure to comply with FTC or any other federal and state regulations, or with similar regulations in foreign markets, that cover our product claims and advertising, including direct claims and advertising by us, may result in enforcement actions and imposition of penalties or otherwise materially adversely affect the distribution and sale of our products, which could have a material adverse effect on our business, financial condition and results from operations.

Product liability claims and related negative publicity could adversely affect our sales and operating results.

We may be required to pay for losses or injuries purportedly caused by our products. From time to time we have been and may again be subjected to various product liability claims. Claims could be based on allegations that, among other things, our products contain contaminants, include inadequate instructions or warnings regarding their use or inadequate warnings concerning side effects and interactions with other substances. Any product liability claims may result in negative publicity that may adversely affect our sales and operating results. Also, if one of our products is found to be defective we may be required to recall it. This may result in substantial costs and negative publicity which may adversely affect our sales and operating results. Although we maintain, and require our suppliers and third-party manufacturers to maintain, product liability insurance coverage, potential product liability claims may exceed the amount of insurance coverage or potential product liability claims may be excluded under the terms of the policy, which could have a material adverse effect on our business, financial condition and results from

operations. In addition, in the future we may not be able to obtain adequate insurance coverage or we may be required to pay higher premiums and accept higher deductibles in order to secure adequate insurance coverage.

If we are unable to protect our intellectual property rights our ability to compete effectively in the market for our products could be negatively impacted.

The market for our products depends to a significant extent upon the goodwill associated with our trademarks, trade names and patents. Our trademarks and trade names convey that the products we sell are “brand name” products. We believe consumers ascribe value to our brands, some of which are over 100 years old. We own or license the material trademarks, trade names and patents used in connection with the packaging, marketing and sale of our products. These rights prevent our competitors or new entrants to the market from using our valuable brand names and technologies. Therefore, trademark, trade name and patent protection is critical to our business. Although most of our material intellectual property is registered in the United States and in applicable foreign countries, we may not be successful in asserting protection. If we were to lose the exclusive right to use one or more of our intellectual property rights, the loss of such exclusive right could have a material adverse effect on our business, financial condition and results from operations.

Other parties may infringe on our intellectual property rights and may thereby dilute the value of our brands in the marketplace. Brand dilution or the introduction of competitive brands could cause confusion in the marketplace and adversely affect the value that consumers associate with our brands, and thereby negatively impact our sales. Any such infringement of our intellectual property rights would also likely result in a commitment of our time and resources, financial or otherwise, to protect these rights through litigation or other means. In addition, third parties may assert claims against our intellectual property rights and we may not be able to successfully resolve those claims causing us to lose our ability to use our intellectual property that is the subject of those claims. Such loss could have a material adverse effect on our business, financial condition and results from operations. Furthermore, from time to time, we may be involved in litigation in which we are enforcing or defending our intellectual property rights which could require us to incur substantial fees and expenses and have a material adverse effect on our business, financial condition and results from operations.

We license certain of our trademarks to third party licensees, who are bound by their respective license agreement to protect our trademarks from infringement and adhere to defined quality requirements. If a licensee of our trademarks fails to adhere to the contractually defined quality requirements, our financial results could be negatively impacted if one of our brands suffers a substantial impairment to its reputation due to real or perceived quality issues. Further, if a licensee fails to protect one of our licensed trademarks from infringement, we might be required to take action.

Virtually all of our assets consist of goodwill and intangibles.

As our financial statements indicate, virtually all of our assets consist of goodwill and intangibles, principally the trademarks, trade names and patents that we have acquired. We recorded charges in 2010 and 2009 for impairment of certain assets and in the event that the value of those assets become further impaired or our business is materially adversely affected in any way, we would not have tangible assets that could be sold to repay our liabilities. As a result, our creditors and investors may not be able to recoup the amount of the indebtedness that they have extended to us or the amount they have invested in us.

We depend on third parties for intellectual property relating to some of the products we sell, and our inability to maintain or enter into future license agreements may result in our failure to meet customer demand, which would adversely affect our operating results.

We have licenses or manufacturing agreements with third parties that own intellectual property (e.g., formulae, copyrights, trademarks, trade dress, patents and other technology) used in the manufacture and sale of certain of our products. In the event that any such license or manufacturing agreement expires or is otherwise terminated, we will lose the right to use the intellectual property covered by such license or agreement and will have to develop or obtain rights to use other intellectual property. Similarly, our rights could be reduced if the applicable licensor or third-party manufacturer fails to maintain or protect the licensed intellectual property because, in such event, our competitors could obtain the right to use the intellectual property without restriction. If this were to occur, we might not be able to develop or obtain replacement intellectual property in a timely or cost effective manner. Additionally, any modified products may not be well-received by customers. The consequences of losing the right to use or having reduced rights to such intellectual property could negatively impact our sales due to our failure to meet consumer demand for the affected products or require us to incur costs for development of new or different intellectual property, either of which could have a material adverse effect on our business, financial condition and results from operations. In addition, development of replacement products may be time-consuming and ultimately may not be feasible.

We depend on our key personnel and the loss of the services provided by any of our executive officers or other key employees could harm our business and results of operations.

Our success depends to a significant degree upon the continued contributions of our senior management, many of whom would be difficult to replace. These employees may voluntarily terminate their employment with us at any time. We may not be able to successfully retain existing personnel or identify, hire and integrate new personnel. While we believe we have developed depth and experience among our key personnel, our business may be adversely affected if one or more of these key individuals were to leave. We do not maintain any key-man or similar insurance policies covering any of our senior management or key personnel.

Our indebtedness could adversely affect our financial condition and the significant amount of cash we need to service our debt will not be available to reinvest in our business.

At March 31, 2012, our total indebtedness, including current maturities, is approximately \$1,135.0 million.

Our indebtedness could:

- Increase our vulnerability to general adverse economic and industry conditions;
- Limit our ability to engage in strategic acquisitions;
- Require us to dedicate a substantial portion of our cash flow from operations toward repayment of our indebtedness, thereby reducing the availability of our cash flow to fund working capital, capital expenditures, acquisitions and investments and other general corporate purposes;
- Limit our flexibility in planning for, or reacting to, changes in our business and the markets in which we operate;
- Place us at a competitive disadvantage compared to our competitors that have less debt; and
- Limit, among other things, our ability to borrow additional funds on favorable terms or at all.

The terms of the indentures governing the 8.25% senior notes and the 8.125% senior notes, and the credit agreement governing the 2012 senior credit facility allow us to issue and incur additional debt upon satisfaction of conditions set forth in the respective agreements. If new debt is added to current debt levels, the related risks described above could increase.

At March 31, 2012, we had \$50.0 million of borrowing capacity available under the 2012 ABL Revolver to support our operating activities.

Our operating flexibility is limited in significant respects by the restrictive covenants in our senior credit facility and the indenture governing our senior notes.

Our senior credit facility and the indenture governing our senior notes impose restrictions that could impede our ability to enter into certain corporate transactions, as well as increase our vulnerability to adverse economic and industry conditions by limiting our flexibility in planning for, and reacting to, changes in our business and industry. These restrictions limit our ability to, among other things:

- Borrow money or issue guarantees;
- Pay dividends, repurchase stock from or make other restricted payments to stockholders;
- Make investments or acquisitions;
- Use assets as security in other transactions;
- Sell assets or merge with or into other companies;
- Enter into transactions with affiliates;
- Sell stock in our subsidiaries; and

- Direct our subsidiaries to pay dividends or make other payments to us.

Our ability to engage in these types of transactions is generally limited by the terms of the senior credit facility and the indenture governing the senior notes, even if we believe that a specific transaction would positively contribute to our future growth, operating results or profitability. However, if we are able to enter into these types of transactions under the terms of the senior credit facility and the indenture, or if we obtain a waiver with respect to any specific transaction, that transaction may cause our indebtedness to increase, may not result in the benefits we anticipate or may cause us to incur greater costs or suffer greater disruptions in our business than we anticipate, and could therefore, have a material adverse effect on our business, financial condition and results from operations.

In addition, the new senior credit facility requires us to maintain certain leverage, interest coverage and fixed charge ratios. Although we believe we can continue to meet and/or maintain the financial covenants contained in our credit agreement, our ability to do so may be affected by events outside our control. Covenants in our senior credit facility also require us to use 100% of the proceeds we receive from debt issuances to repay outstanding borrowings under our senior credit facility. Any failure by us to comply with the terms and conditions of the credit agreement and the indenture governing the senior notes could have a material adverse effect on our business, financial condition and results from operations.

The senior credit facility and the indentures governing the senior notes contain cross-default provisions that could result in the acceleration of all of our indebtedness.

The senior credit facility and the indentures governing the senior notes contain provisions that allow the respective creditors to declare all outstanding borrowings under one agreement to be immediately due and payable as a result of a default under the other agreement. Consequently, under the senior credit facility, failure to make a payment required by the indentures governing the senior notes, among other things, may lead to an event of default under the senior credit facility. Similarly, an event of default or failure to make a required payment at maturity under the senior credit facility, among other things, may lead to an event of default under the indentures governing the senior notes. If the debt under the senior credit facility and indentures governing the senior notes were to both be accelerated, the aggregate amount immediately due and payable as of March 31, 2012 would have been approximately \$1,135.0 million. We presently do not have sufficient liquidity to repay these borrowings in the event they were to be accelerated, and we may not have sufficient liquidity in the future to do so. Additionally, we may not be able to borrow money from other lenders to enable us to refinance the indebtedness. At March 31, 2012, the book value of our current assets was \$147.0 million. Although the book value of our total assets was \$1,758.3 million, approximately \$1,574.2 million was in the form of intangible assets, including goodwill of \$173.7 million, a significant portion of which is illiquid and may not be available to satisfy our creditors in the event our debt is accelerated.

Any failure to comply with the restrictions of the senior credit facility, the indentures governing the senior notes or any other subsequent financing agreements may result in an event of default. Such default may allow the creditors to accelerate the related debt, as well as any other debt to which the cross-acceleration or cross-default provisions apply. In addition, the lenders may be able to terminate any commitments they had made to supply us with additional funding. As a result, any default by us under our credit agreement, indentures governing the senior notes or any other financing agreement, could have a material adverse effect on our business, financial condition and results from operations.

Litigation may adversely affect our business, financial condition and results of operations.

Our business is subject to the risk of litigation by employees, customers, consumers, suppliers, stockholders or others through private actions, class actions, administrative proceedings, regulatory actions or other litigation. The outcome of litigation, particularly class action lawsuits and regulatory actions, is difficult to assess or quantify. Plaintiffs in these types of lawsuits may seek recovery of very large or indeterminate amounts, and the magnitude of the potential loss relating to such lawsuits may remain unknown for substantial periods of time. The cost to defend current and future litigation may be significant. There may also be adverse publicity associated with litigation that could decrease customer acceptance of our products, regardless of whether the allegations are valid or whether we are ultimately found liable. Conversely, we may be required to initiate litigation against others to protect the value of our intellectual property and the goodwill associated therewith or enforce an agreement or contract that has been breached. These matters are extremely time consuming and expensive, but absolutely necessary to maintain enterprise value, protect our assets and realize the benefits of the agreements and contracts that we have negotiated and safeguard our future. As a result, litigation may adversely affect our business, financial condition and results of operations.

The trading price of our common stock may be volatile.

The trading price of our common stock could be subject to significant fluctuations in response to several factors, some of which are beyond our control, including (i) general stock market volatility, (ii) variations in our quarterly operating results, (iii) our

leveraged financial position, (iv) potential sales of additional shares of our common stock, (v) perceptions associated with the identification of material weaknesses in internal control over financial reporting, (vi) general trends in the consumer products industry, (vii) changes by securities analysts in their estimates or investment ratings, (viii) the relative illiquidity of our common stock, (ix) voluntary withdrawal or recall of products, (x) news regarding litigation in which we are or become involved, and (xi) general marketplace conditions brought on by economic recession.

We have no current intention of paying dividends to holders of our common stock.

We presently intend to retain our earnings, if any, for use in our operations, to facilitate strategic acquisitions, or to repay our outstanding indebtedness and have no current intention of paying dividends to holders of our common stock. In addition, our debt instruments limit our ability to declare and pay cash dividends on our common stock. As a result, your only opportunity to achieve a return on your investment in our common stock will be if the market price of our common stock appreciates and you sell your shares at a profit.

Our annual and quarterly results from operations may fluctuate significantly and could fall below the expectations of securities analysts and investors due to a number of factors, many of which are beyond our control, resulting in a decline in the price of our securities.

Our annual and quarterly results from operations may fluctuate significantly because of several factors, including:

- Increases and decreases in average quarterly revenues and profitability;
- The rate at which we make acquisitions or develop new products and successfully market them;
- Our inability to increase the sales of our existing products and expand their distribution;
- Adverse regulatory or market events in our international markets;
- Litigation matters;
- Changes in consumer preferences, spending habits and competitive conditions, including the effects of competitors' operational, promotional or expansion activities;
- Seasonality of our products;
- Fluctuations in commodity prices, product costs, utilities and energy costs, prevailing wage rates, insurance costs and other costs;
- Our ability to recruit, train and retain qualified employees, and the costs associated with those activities;
- Changes in advertising and promotional activities and expansion to new markets;
- Negative publicity relating to us and the products we sell;
- Unanticipated increases in infrastructure costs;
- Impairment of goodwill or long-lived assets;
- Changes in interest rates; and
- Changes in accounting, tax, regulatory or other rules applicable to our business.

Our quarterly operating results and revenues may fluctuate as a result of any of these or other factors. Accordingly, results for any one quarter are not necessarily indicative of results to be expected for any other quarter or for any year, and revenues for any particular future period may decrease. In the future, operating results may fall below the expectations of securities analysts and investors. In that event, the market price of our outstanding securities could be adversely impacted.

We can be adversely affected by the implementation of new, or changes in the interpretation of existing, accounting principles generally accepted in the United States of America (“GAAP”).

Our financial reporting complies with GAAP which is subject to change over time. If new rules or interpretations of existing rules require us to change our financial reporting, our financial condition and results from operations could be adversely affected.

Identification of a material weakness in internal controls over financial reporting may adversely affect our financial results.

We are subject to the ongoing internal control provisions of Section 404 of the Sarbanes-Oxley Act of 2002 and the regulations promulgated thereunder. Those provisions provide for the identification and reporting of material weaknesses in our system of internal controls over financial reporting. If such a material weakness is identified, it could indicate a lack of controls adequate to generate accurate financial statements. We routinely assess our internal controls over financial reporting, but we cannot assure you that we will be able to timely remediate any material weaknesses that may be identified in future periods, or maintain all of the controls necessary for continued compliance. Likewise, we cannot assure you that we will be able to retain sufficient skilled finance and accounting personnel, especially in light of the increased demand for such personnel among publicly-traded companies.

Provisions in our amended and restated certificate of incorporation and Delaware law may discourage potential acquirers of our company, which could adversely affect the value of our securities.

Our amended and restated certificate of incorporation provides that our board of directors is authorized to issue from time to time, without further stockholder approval, up to five million shares of preferred stock in one or more series of preferred stock issuances. Our board of directors may establish the number of shares to be included in each series of preferred stock and determine, as applicable, the voting and other powers, designations, preferences, rights, qualifications, limitations and restrictions for such series of preferred stock. The shares of preferred stock could have preferences over our common stock with respect to dividends and liquidation rights. We may issue additional preferred stock in ways which may delay, defer or prevent a change in control of the Company without further action by our stockholders. The shares of preferred stock may be issued with voting rights that may adversely affect the voting power of the holders of our common stock by increasing the number of outstanding shares having voting rights, and by the creation of class or series voting rights.

Our amended and restated certificate of incorporation, as amended, contains additional provisions that may have the effect of making it more difficult for a third party to acquire or attempt to acquire control of our company. In addition, we are subject to certain provisions of Delaware law that limit, in some cases, our ability to engage in certain business combinations with significant stockholders.

These provisions, either alone, or in combination with each other, give our current directors and executive officers the ability to significantly influence the outcome of a proposed acquisition of the Company. These provisions would apply even if an acquisition or other significant corporate transaction was considered beneficial by some of our stockholders. If a change in control or change in management is delayed or prevented by these provisions, the market price of our outstanding securities could be adversely impacted.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our corporate headquarters is located in Irvington, New York, a suburb of New York City. Primary functions performed at the Irvington facility include senior management, marketing, sales, operations, quality control and regulatory affairs, finance and legal. We believe our Irvington facility is adequate and the lease expires on April 30, 2014. We also have an administrative center in Jackson, Wyoming which we also believe is adequate. Primary functions performed at the Jackson facility include back office functions, such as invoicing, credit and collection, general ledger and customer service. The lease on the Jackson facility expires on December 31, 2012; however, we have the option to renew the lease on an annual basis. Both of our facilities serve the OTC Healthcare and Household Cleaning segments.

ITEM 3. LEGAL PROCEEDINGS

We are involved from time to time in routine legal matters and other claims incidental to our business. We review outstanding claims and proceedings internally and with external counsel as necessary to assess probability and amount of potential loss. These assessments are re-evaluated at each reporting period and as new information becomes available to determine whether a reserve should be established or if any existing reserve should be adjusted. The actual cost of resolving a claim or proceeding ultimately may be substantially different than the amount of the recorded reserve. In addition, because it is not permissible under GAAP to establish a litigation reserve until the loss is both probable and estimable, in some cases there may be insufficient time to establish a reserve prior to the actual incurrence of the loss (upon verdict and judgment at trial, for example, or in the case of a quickly negotiated settlement). We believe the resolution of routine matters and other incidental claims, taking our reserves into account, will not have a material adverse effect on our business, financial condition or results from operations.

ITEM 4. MINE SAFETY DISCLOSURES

None.

Part II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Our common stock is listed on The New York Stock Exchange ("NYSE") under the symbol "PBH." The high and low closing prices of our common stock as reported by the NYSE for the two most recently completed fiscal years on a quarterly basis and the current year through April 30, 2012 are as follows:

	<u>High</u>	<u>Low</u>
Year Ending March 31, 2013		
April 1, 2012 - April 30, 2012	\$ 17.75	\$ 16.99
Year Ended March 31, 2012		
Quarter Ended:		
June 30, 2011	\$ 12.91	\$ 10.87
September 30, 2011	13.44	8.37
December 31, 2011	11.68	8.33
March 31, 2012	17.73	11.21
Year Ended March 31, 2011		
Quarter Ended:		
June 30, 2010	\$ 9.95	\$ 7.08
September 30, 2010	9.93	7.21
December 31, 2010	12.15	9.82
March 31, 2011	12.59	10.60

Unregistered Sales of Equity Securities and Use of Proceeds

There were no equity securities sold by us during the quarter ended March 31, 2012 that were not registered under the Securities Act.

There were no purchases of shares of our common stock made during the quarter ended March 31, 2012, by or on behalf of us or any "affiliated purchaser," as defined by Rule 10b-18(a)(3) of the Exchange Act.

Holder

As of April 30, 2012, there were 38 holders of record of our common stock. The number of record holders does not include beneficial owners whose shares are held in the names of banks, brokers, nominees or other fiduciaries.

Dividend Policy

Common Stock

We have not in the past paid, and do not expect for the foreseeable future to pay, cash dividends on our common stock. Instead, we anticipate that all of our earnings in the foreseeable future will be used in our operations, to facilitate strategic acquisitions, or to pay down our outstanding indebtedness. Any future determination to pay dividends will be at the discretion of our board of directors and will depend upon, among other factors, our results from operations, financial condition, capital requirements and contractual restrictions limiting our ability to declare and pay cash dividends, including restrictions under our 2012 Term Loan and the indentures governing our senior notes, and any other considerations our board of directors deems relevant.

Preferred Stock Dividend

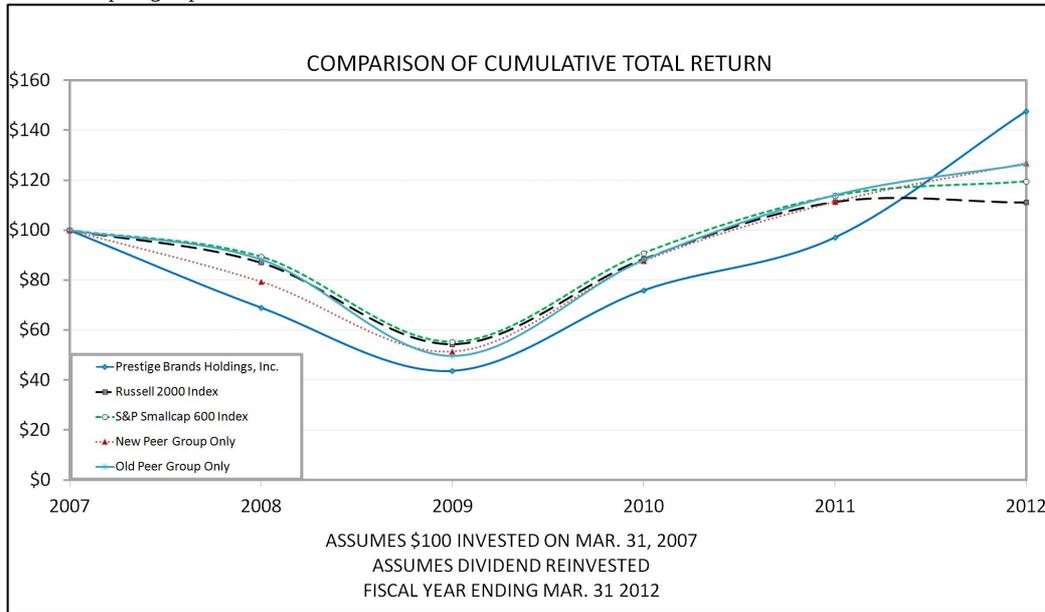
On February 26, 2012, we declared a dividend of one preferred share purchase right (a "Right"), payable on March 8, 2012, for each share of our common stock, par value \$0.01 per share, outstanding as of March 8, 2012 to the stockholders of record on that date. Each Right entitles the registered holder to purchase from us one one-thousandth of a share of Series A Preferred Stock, par value \$0.01 per share (the "Preferred Shares"), of the Company at a price of \$65.00 per one one-thousandth of a Preferred Share represented by a Right, subject to a dilution adjustment.

In connection with the distribution of the Rights, we entered into a Rights Agreement (the "Rights Agreement"), dated as of February 27, 2012, between us and Computershare Trust Company, N.A., as Rights Agent. The Rights are in all respects subject to and governed by the provisions of the Rights Agreement.

Part III, Item 12 of this Annual Report on Form 10-K is incorporated herein by reference.

PERFORMANCE GRAPH

The following graph ("Performance Graph") compares our cumulative total stockholder return since March 31, 2007, with the cumulative total stockholder return for the Standard & Poor's SmallCap 600 Index, the Russell 2000 Index and our old and new peer group indices. The Company is included in each of the Standard & Poor's SmallCap 600 Index and the Russell 2000 Index. The Performance Graph assumes that the value of the investment in the Company's common stock and each index was \$100.00 on March 31, 2007. The Performance Graph was also prepared based on the assumption that all dividends paid, if any, were reinvested. The new peer group index was established in 2011 by the Company in connection with research regarding improvements to our executive compensation program in light of the significant recent growth of the Company. Based on the Company's use of the new peer group for executive compensation benchmarking purposes, we believe the new peer group should be included in the Performance Graph. The Company previously used the old peer group.



March 31,

Company/Market/Peer Group	2007	2008	2009	2010	2011	2012
Prestige Brands Holdings, Inc.	\$ 100.00	\$ 69.03	\$ 43.71	\$ 75.95	\$ 97.05	\$ 147.51
Russell 2000 Index	100.00	87.01	54.37	88.49	111.32	111.10
S&P SmallCap 600 Index	100.00	89.40	55.37	90.80	113.74	119.44
New Peer Group Index (1)	100.00	79.46	51.44	87.73	111.42	126.89
Old Peer Group Index (1)	100.00	88.30	49.64	88.11	114.06	126.49

- (1) The Peer Group Index is a self-constructed peer group consisting of companies in the consumer products industry with comparable revenues and market capitalization, from which the Company has been excluded. The new peer group index was constructed in connection with the Company's analysis of its executive compensation program in light of the Company's significant recent growth. The new peer group index is comprised of: (i) B&G Food Holdings Corp., (ii) Hain Celestial Group, Inc., (iii) Hi Tech Pharmaceutical Co. Inc., (iv) Helen of Troy, Ltd., (v) Inter Parfums, Inc., (vi) Lifetime Brands, Inc., (vii) Maidenform Brands, Inc., (viii) Smart Balance, Inc., (ix) USANA Health Sciences, Inc., (x) WD-40 Company, and (xi) Zep, Inc. The old peer group index included some of the same companies as well as companies of smaller sizes.

The Performance Graph shall not be deemed incorporated by reference by any general statement incorporating by reference this Annual Report on Form 10-K into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that we specifically incorporate this information by reference, and shall not otherwise be deemed filed under such Acts.

ITEM 6. SELECTED FINANCIAL DATA
Prestige Brands Holdings, Inc.
(In thousands, except per share data)

	Year Ended March 31,				
	2012	2011	2010	2009	2008
Income Statement Data					
Total revenues	\$ 441,085	\$ 336,510	\$ 292,602	\$ 294,346	\$ 306,571
Cost of sales (1)	213,701	165,632	139,158	138,909	145,968
Gross profit	227,384	170,878	153,444	155,437	160,603
Advertising and promotion	57,127	42,897	30,923	37,376	33,733
General and administrative (2)	56,700	41,960	34,195	31,888	31,414
Depreciation and amortization	10,734	9,876	10,001	8,872	8,667
Impairment of goodwill and intangibles	—	—	—	249,285	—
Interest expense, net	41,320	27,317	22,935	28,436	37,393
Gain on settlement	(5,063)	—	—	—	—
Other expense (income)	5,409	300	2,656	—	(187)
Income (loss) from continuing operations before income taxes	61,157	48,528	52,734	(200,420)	49,583
Provision (benefit) for income taxes	23,945	19,349	20,664	(10,876)	18,558
Income (loss) from continuing operations	37,212	29,179	32,070	(189,544)	31,025
Discontinued Operations					
Income (loss) from discontinued operations, net of income tax	—	591	(112)	2,768	2,894
(Loss) gain on sale of discontinued operations, net of income tax	—	(550)	157	—	—
Net income (loss) available to common stockholders	\$ 37,212	\$ 29,220	\$ 32,115	\$ (186,776)	\$ 33,919
Basic earnings per share:					
Income (loss) from continuing operations	\$ 0.74	\$ 0.58	\$ 0.64	\$ (3.80)	\$ 0.62
Income (loss) from discontinued operations and gain (loss) from sale of discontinued operations	—	—	—	0.06	0.06
Net income (loss)	\$ 0.74	\$ 0.58	\$ 0.64	\$ (3.74)	\$ 0.68
Diluted earnings per share:					
Income (loss) from continuing operations	\$ 0.73	\$ 0.58	\$ 0.64	\$ (3.80)	\$ 0.62
Income (loss) from discontinued operations and gain (loss) from sale of discontinued operations	—	—	—	0.06	0.06
Net income (loss)	\$ 0.73	\$ 0.58	\$ 0.64	\$ (3.74)	\$ 0.68
Weighted average shares outstanding:					
Basic	50,270	50,081	50,013	49,935	49,751
Diluted	50,748	50,338	50,085	49,935	50,039

Other Financial Data	Year Ended March 31,				
	2012	2011	2010	2009	2008
Capital expenditures	\$ 606	\$ 655	\$ 673	\$ 481	\$ 488
Cash provided by (used in):					
Operating activities	67,452	86,670	59,427	66,679	44,989
Investing activities	(662,206)	(275,680)	7,320	(4,672)	(537)
Financing activities	600,434	161,247	(60,831)	(32,904)	(52,132)

Balance Sheet Data	March 31,				
	2012	2011	2010	2009	2008
Cash and cash equivalents	\$ 19,015	\$ 13,334	\$ 41,097	\$ 35,181	\$ 6,078
Total assets	1,758,276	1,056,918	791,412	801,381	1,049,156
Total long-term debt, including current maturities	1,135,000	492,000	328,087	378,337	411,225
Stockholders' equity	402,728	361,832	329,059	294,385	479,073

- (1) For 2012 and 2011, cost of sales included \$1.8 million and \$7.3 million, respectively, of charges related to the step-up of inventory associated with acquisitions.
- (2) General and administrative expense included \$13.8 million of costs related to the GSK brands acquisition, \$1.7 million of unsolicited offer defense costs in 2012, and \$7.7 million of costs related to the acquisitions of Blacksmith and *Dramamine* in 2011.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our financial condition and results of operations should be read together with the "Selected Financial Data" and the Consolidated Financial Statements and the related notes included elsewhere in this Annual Report on Form 10-K. This discussion and analysis may contain forward-looking statements that involve certain risks, assumptions and uncertainties. Future results could differ materially from the discussion that follows for many reasons, including the factors described in Part I, Item 1A "Risk Factors" in this Annual Report on Form 10-K, as well as those described in future reports filed with the SEC.

General

We are engaged in the marketing, sales and distribution of brand name Over-the-Counter ("OTC") Healthcare and Household Cleaning products to mass merchandisers, drug stores, supermarkets and dollar and club stores primarily in the United States and Canada. We continue to use the strength of our brands, our established retail distribution network, a low-cost operating model and our experienced management team as a competitive advantage to grow our presence in these categories and, as a result, grow our sales and profits.

We have grown our brand portfolio both organically and through acquisitions. We develop our existing brands by investing in new product lines, brand extensions and strong advertising support. Acquisitions of OTC brands have also been an important part of our growth strategy. We have acquired strong and well-recognized brands from consumer products and pharmaceutical companies. While many of these brands have long histories of brand development and investment, we believe that, at the time we acquired them, most were considered "non-core" by their previous owners. As a result, these acquired brands did not benefit from adequate management focus and marketing support during the period prior to their acquisition, which created significant opportunities for us to reinvigorate these brands and improve their performance post-acquisition. After adding a brand to our portfolio, we seek to increase its sales, market share and distribution in both existing and new channels through our established retail distribution network. We pursue this growth through increased spending on advertising and promotional support, new sales and marketing strategies, improved packaging and formulations, and innovative development of brand extensions.

Acquisitions

Acquisition of GlaxoSmithKline OTC Brands

On December 20, 2011, we entered into two separate agreements with GlaxoSmithKline plc ("GSK") to acquire a total of 17 North American OTC pharmaceutical brands for \$660.0 million in cash. On January 31, 2012, we completed, subject to a post-closing inventory and apportionment adjustment, as defined in the GSK agreement, the acquisition of 15 North American OTC healthcare brands owned by GSK and its affiliates (the "GSK Brands I") for \$615.0 million in cash, including the related contracts, trademarks and inventory.

The GSK Brands I include, among other brands, *BC*, *Goody's* and *Ecotrin* brands of pain relievers; *Beano*, *Gaviscon*, *Phazyme*, *Tagamet* and *Fiber Choice* gastrointestinal brands; and the *Sominex* sleep aid brand. These brands are complementary to our existing OTC Healthcare portfolio.

On March 30, 2012, we completed the acquisition of the other two OTC pharmaceutical brands, the *Debrox* and *Gly-Oxide* brands (the "GSK Brands II") in the United States for \$45.0 million in cash, including the related contracts, trademarks and inventory, subject to a post-closing inventory adjustment. The GSK Brands II are also complementary to our existing OTC Healthcare portfolio.

These acquisitions were accounted for in accordance with the Business Combinations topic of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC"), which requires that the total cost of an acquisition be allocated to the tangible and intangible assets acquired and liabilities assumed based upon their respective fair values at the date of acquisition.

The purchase price of GSK Brands I and GSK Brands II was funded by cash provided by the issuance of long-term debt and additional bank borrowings, which are discussed further in Note 10 to the Consolidated Financial Statements in this Annual Report on Form 10-K.

In April 2012, we received the post-closing inventory and apportionment adjustments to the acquisitions of the GSK Brands I and GSK Brands II, which required an additional \$2.8 million to be paid to GSK.

Concurrent with the closing of the transaction on January 31, 2012, we entered into a Transitional Services Agreement with GSK (the "TSA"), whereby GSK is to provide various services including: marketing, operations, finance and other services from the

acquisition date through June 30, 2012. As part of the TSA, GSK will, among other things, ship products, invoice customers, collect from customers and pay certain vendors on our behalf. Our costs under the TSA are approximately \$2.5 million per month for the length of the agreement and may be reduced if we remove certain services as we transition these processes to us. We incurred \$5.0 million in TSA costs for the period ended March 31, 2012. Pursuant to such arrangement, we will receive, on a monthly basis the net amount owed to us for revenues and expenses, net of GSK's TSA fees and inventory that GSK purchased on our behalf. As a result, a net amount due of \$8.4 million from GSK is included in our accounts receivable at March 31, 2012.

The allocation of the purchase price to assets acquired is based on a valuation which we performed to determine the fair value of such assets as of the acquisition date. The following table summarizes our preliminary allocation of the \$662.8 million purchase price to the assets we acquired at the GSK Brands I and GSK Brands II (collectively, the "GSK Brands") acquisition dates:

<i>(In thousands)</i>	GSK Brands I (January 31, 2012)	GSK Brands II (March 30, 2012)	Total
Inventory	\$ 14,820	\$ 250	\$ 15,070
Prepaid expenses	3,575	—	3,575
Trade names	542,892	81,257	624,149
Goodwill	17,401	2,605	20,006
Total purchase price	<u>\$ 578,688</u>	<u>\$ 84,112</u>	<u>\$ 662,800</u>

Transaction and other costs of \$13.8 million associated with the GSK Brands acquisition are included in general and administrative expenses in our Consolidated Statement of Operations for 2012.

We recorded goodwill based on the amount by which the purchase price exceeded the fair value of assets acquired. The amount of goodwill deductible for tax purposes is \$20.0 million.

The fair value of the trade names is comprised of \$556.9 million of non-amortizable intangible assets and \$67.2 million of amortizable intangible assets. We are amortizing the purchased amortizable intangible assets on a straight-line basis over an estimated weighted average useful life of 19.3 years. The weighted average remaining life for amortizable intangible assets at March 31, 2012 was 19.1 years.

The operating results of GSK Brands I have been included in our Consolidated Financial Statements from February 1, 2012, the day following the date of acquisition. Revenues of the acquired operations from February 1, 2012 through March 31, 2012 were \$30.4 million and the net loss was \$2.8 million. The operating results of GSK Brands II will be included in our Consolidated Financial Statements beginning April 1, 2012. Accordingly, we did not record any revenues or operating results in the accompanying Consolidated Financial Statements related to GSK Brands II.

Blacksmith Acquisition

On November 1, 2010, we acquired 100% of the capital stock of Blacksmith Brands Holdings, Inc. ("Blacksmith") for \$190.0 million in cash, plus a working capital adjustment of \$13.4 million, and we paid an additional \$1.1 million on behalf of Blacksmith for the seller's transaction costs. As previously disclosed, we brought to arbitration a matter regarding the working capital adjustment related to Blacksmith. On July 20, 2011, we received notification from the arbitrator that we would be awarded a working capital adjustment pending final resolution and distribution from the escrow agent. In September 2011, we received \$1.2 million in settlement of this matter, which reduced the amount of recorded goodwill related to Blacksmith.

As a result of this acquisition, we acquired five leading consumer OTC brands: *Efferdent*, *Effergrip*, *PediaCare*, *Luden's*, and *NasalCrom*. We believe, the acquisition of the five brands enhances our position in the OTC market and that these brands will benefit from a targeted advertising and marketing program, as well as our business model of outsourcing manufacturing and the elimination of redundant operations. The purchase price was funded by cash provided by the issuance of long-term debt and additional bank borrowings, which are discussed further in Note 10 to the Consolidated Financial Statements in this Annual Report on Form 10-K.

The Blacksmith acquisition was accounted for in accordance with the Business Combinations topic of the ASC, which requires that the total cost of an acquisition be allocated to the tangible and intangible assets acquired and liabilities assumed based upon their respective fair values at the date of acquisition.

The following table summarizes our final allocation of the \$203.4 million purchase price to the assets we acquired and liabilities we assumed on the Blacksmith acquisition date:

<i>(In thousands)</i>	November 1, 2010	
Cash acquired	\$	2,507
Accounts receivable, net		17,473
Other receivables		1,198
Income taxes receivable		5
Inventories		22,155
Prepays and other current assets		44
Property, plant and equipment, net		226
Goodwill		42,207
Trademarks		165,346
Other long-term assets		19
Total assets acquired		<u>251,180</u>
Accounts payable		7,060
Accrued expenses		5,212
Income taxes payable		2,031
Deferred income taxes		33,526
Total liabilities assumed		<u>47,829</u>
Total purchase price	\$	<u>203,351</u>

Transaction and other costs of \$7.2 million associated with the Blacksmith acquisition are included in general and administrative expenses in our statement of operations for 2011.

We recorded goodwill based on the amount by which the purchase price exceeded the fair value of net assets acquired. The amount of goodwill deductible for tax purposes is \$4.6 million.

The fair value of the trademarks is comprised of \$158.0 million of non-amortizable intangible assets and \$7.3 million of amortizable intangible assets. We are amortizing the purchased amortizable intangible assets on a straight-line basis over an estimated useful life of 15 years. The weighted average remaining life for the amortizable intangible assets at March 31, 2012 was 13.6 years.

The operating results of Blacksmith have been included in our Consolidated Financial Statements from November 1, 2010, the date of acquisition. Revenues of the acquired operations from November 1, 2010 through March 31, 2011 were \$34.8 million and the net loss was \$4.8 million.

The following table provides our combined unaudited pro forma revenues, income from continuing operations and income from continuing operations per basic and diluted common share as if the results of Blacksmith and GSK Brands occurred on April 1, 2010. The pro forma results were prepared from financial information obtained from the sellers of the businesses, as well as information obtained during the due diligence processes associated with the acquisitions. The unaudited pro forma results reflect certain adjustments related to the acquisitions, such as increased depreciation and amortization expense resulting from the stepped-up basis to fair value of the assets acquired and adjustments to reflect the Company's borrowing and tax rates. This pro forma information is not necessarily indicative either of the combined results of operations that actually would have been realized by us had the acquisition of the Blacksmith and GSK brands been consummated at the beginning of the period for which the pro forma information is presented, or of future results.

<i>(In thousands, except per share data)</i>	Year Ended March 31,	
	2012	2011
	<i>(Unaudited)</i>	
Revenues	\$ 616,849	\$ 599,543
Income from continuing operations	69,989	34,913
Basic earnings per share:		
Income from continuing operations	\$ 1.39	\$ 0.70
Diluted earnings per share:		
Income from continuing operations	\$ 1.38	\$ 0.69

Dramamine Acquisition

On January 6, 2011, we acquired certain assets comprising the *Dramamine* brand in the United States. The purchase price was \$77.1 million in cash, after a \$0.1 million post-closing inventory adjustment and including transaction costs of \$1.2 million incurred in the acquisition. We acquired the *Dramamine* brand primarily to expand our brand offerings and complement our existing OTC brands. The purchase price was funded by cash on hand.

In accounting for the acquisition of the *Dramamine* brand, we considered the Business Combinations topic of the ASC. Accordingly, as the *Dramamine* assets acquired do not constitute a business, as defined in the ASC, we have accounted for the transaction as an asset acquisition. The total consideration paid, including transaction costs, have been allocated to the tangible and intangible assets acquired based upon their relative fair values at the date of acquisition.

The allocation of the purchase price to assets acquired assumed is based on valuations we performed to determine the fair value of such assets as of the acquisition date. The following table summarizes our allocation of the \$77.1 million purchase price to the assets we acquired comprising the assets of the *Dramamine* brand:

<i>(In thousands)</i>	January 6, 2011	
Inventories	\$	1,249
Trademark		75,866
Total purchase price	\$	77,115

The \$75.9 million fair value of the acquired *Dramamine* trademark was comprised of non-amortizable intangible assets.

Discontinued Operations and Sale of Certain Assets

On September 1, 2010, we sold certain assets related to the *Cutex* nail polish remover brand for \$4.1 million. In accordance with the Discontinued Operations topic of the ASC, we reclassified the related operating results as discontinued operations in the Consolidated Financial Statements and related notes in this Annual Report on Form 10-K for all periods presented. We recognized a loss of \$0.9 million on a pre-tax basis and \$0.6 million, net of related tax effects of \$0.3 million, on the sale in 2011. As a result of the divestiture of *Cutex*, which comprised a substantial majority of the assets in our previously reported Personal Care segment, we reclassified the remaining Personal Care segment assets to the OTC Healthcare segment for all periods presented.

In October 2009, we sold certain assets related to the shampoo brands. In accordance with the Discontinued Operations topic of the ASC, we reclassified the related operating results as discontinued in the Consolidated Financial Statements and related notes for all periods presented. We recognized a gain of \$0.3 million on a pre-tax basis and \$0.2 million, net of related tax effects of \$0.1 million, on the sale in 2010. The total sales price for the assets was \$9.0 million, subject to an inventory adjustment, with \$8.0 million received upon closing. We received the remaining \$1.0 million in October 2010.

The following table summarizes the results of discontinued operations:

(In thousands)

Components of Income	Year Ended March 31,		
	2012	2011	2010
Revenues	\$ —	\$ 4,027	\$ 14,474
Income (loss) from discontinued operations, net of tax	—	591	(112)

Critical Accounting Policies and Estimates

Our significant accounting policies are described in the notes to the audited Consolidated Financial Statements included elsewhere in this Annual Report on Form 10-K. While all significant accounting policies are important to our Consolidated Financial Statements, certain of these policies may be viewed as being critical. Such policies are those that are both most important to the portrayal of our financial condition and results from operations and require our most difficult, subjective and complex estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses or the related disclosure of contingent assets and liabilities. These estimates are based upon our historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ materially from these estimates. The most critical accounting policies are as follows:

Revenue Recognition

We recognize revenue when the following revenue recognition criteria are met: (i) persuasive evidence of an arrangement exists; (ii) the product has been shipped and the customer takes ownership and assumes the risk of loss; (iii) the selling price is fixed or determinable; and (iv) collection of the resulting receivable is reasonably assured. We have determined that these criteria are met and the transfer of risk of loss generally occurs when product is received by the customer, and, accordingly we recognize revenue at that time. Provision is made for estimated discounts related to customer payment terms and estimated product returns at the time of sale based on our historical experience.

As is customary in the consumer products industry, we participate in the promotional programs of our customers to enhance the sale of our products. The cost of these promotional programs is recorded as advertising and promotional expenses or as a reduction of sales based upon the nature of such items and the applicable accounting guidance. Such costs vary from period to period based on the actual number of units sold during a finite period of time. We estimate the cost of such promotional programs at their inception based on historical experience and current market conditions and reduce sales by such estimates. These promotional programs consist of direct-to-consumer incentives, such as coupons and temporary price reductions, as well as incentives to our customers, such as allowances for new distribution, including slotting fees, and cooperative advertising. Direct reimbursements of advertising costs are reflected as a reduction of advertising costs in the periods in which the reimbursement criteria are achieved. We do not provide incentives to customers for the acquisition of product in excess of normal inventory quantities, because such incentives would increase the potential for future returns, as well as reduce sales in the subsequent fiscal periods.

Estimates of costs of promotional programs are based on (i) historical sales experience, (ii) the current promotional offering, (iii) forecasted data, (iv) current market conditions, and (v) communication with customer purchasing/marketing personnel. At the completion of the promotional program, the estimated amounts are adjusted to actual results. Our related promotional expense for 2012 was \$32.2 million. We participated in over 7,000 promotional campaigns in 2012, resulting in an average cost of less than \$5,000 per campaign. Of such amount, only approximately 1,000 payments were in excess of \$5,000. We believe that the estimation methodologies employed, combined with the nature of the promotional campaigns, make the likelihood remote that our obligation would be misstated by a material amount. However, for illustrative purposes, had we underestimated the promotional program rate by 10% for 2012, our sales and operating income would have been reduced by approximately \$3.2 million. Net income would have been adversely affected by approximately \$1.9 million.

We also periodically run coupon programs in Sunday newspaper inserts, on our product website or as on-package instant redeemable coupons. We utilize a national clearing house to process coupons redeemed by customers. At the time a coupon is distributed, a provision is made based upon historical redemption rates for that particular product, information provided as a result of the clearing house's experience with coupons of similar dollar value, the length of time the coupon is valid, and the seasonality of the coupon drop, among other factors. During 2012, we had 127 coupon events. The amount recorded against revenues and accrued for these events during the year was \$7.2 million. Cash settlement of coupon redemptions during the year was \$6.4 million.

Allowances for Product Returns

Due to the nature of the consumer products industry, we are required to estimate future product returns. Accordingly, we record an estimate of product returns concurrent with the recording of sales. Such estimates are made after analyzing (i) historical return

rates, (ii) current economic trends, (iii) changes in customer demand, (iv) product acceptance, (v) seasonality of our product offerings, and (vi) the impact of changes in product formulation, packaging and advertising.

We construct our returns analysis by looking at the previous year's return history for each brand. Subsequently, each month, we estimate our current return rate based upon an average of the previous six months' return rate and review that calculated rate for reasonableness, giving consideration to the other factors described above. Our historical return rate has been relatively stable; for example, for the years ended March 31, 2012, 2011 and 2010, returns represented 2.9%, 2.7% and 3.8%, respectively, of gross sales. At March 31, 2012 and 2011, the allowance for sales returns was \$3.3 million and \$5.2 million, respectively.

While we utilize the methodology described above to estimate product returns, actual results may differ materially from our estimates, causing our future financial results to be adversely affected. Among the factors that could cause a material change in the estimated return rate would be significant unexpected returns with respect to a product or products that comprise a significant portion of our revenues. Based upon the methodology described above and our actual returns experience, management believes the likelihood of such an event remains remote. As noted, over the last three years our actual product return rate has stayed within a range of 2.7% to 3.8% of gross sales. A hypothetical increase of 0.1% in our estimated return rate as a percentage of gross sales would have decreased our reported sales and operating income for 2012 by approximately \$0.5 million. Net income would have been reduced by approximately \$0.3 million.

Lower of Cost or Market for Obsolete and Damaged Inventory

We value our inventory at the lower of cost or market value. Accordingly, we reduce our inventories for the diminution of value resulting from product obsolescence, damage or other issues affecting marketability, equal to the difference between the cost of the inventory and its estimated market value. Factors utilized in the determination of estimated market value include (i) current sales data and historical return rates, (ii) estimates of future demand, (iii) competitive pricing pressures, (iv) new product introductions, (v) product expiration dates, and (vi) component and packaging obsolescence.

Many of our products are subject to expiration dating. As a general rule, our customers will not accept goods with expiration dating of less than 12 months from the date of delivery. To monitor this risk, management utilizes a detailed compilation of inventory with expiration dating between zero and 15 months and reserves for 100% of the cost of any item with expiration dating of 12 months or less. Inventory obsolescence costs charged to operations for 2012, 2011, and 2010 were \$3.3 million, \$0.2 million and \$1.7 million, respectively, or 0.8%, 0.1% and 0.6%, respectively, of net sales.

Allowance for Doubtful Accounts

In the ordinary course of business, we grant non-interest bearing trade credit to our customers on normal credit terms. We maintain an allowance for doubtful accounts receivable, which is based upon our historical collection experience and expected collectability of the accounts receivable. In an effort to reduce our credit risk, we (i) establish credit limits for all of our customer relationships, (ii) perform ongoing credit evaluations of our customers' financial condition, (iii) monitor the payment history and aging of our customers' receivables, and (iv) monitor open orders against an individual customer's outstanding receivable balance.

We establish specific reserves for those accounts which file for bankruptcy, have no payment activity for 180 days, or have reported major negative changes to their financial condition. The allowance for bad debts amounted to 1.1% and 0.9% of accounts receivable at March 31, 2012 and 2011, respectively. Bad debt expense in each of the years 2012, 2011 and 2010 was \$0.2 million, representing 0.1% of net sales for each of 2012, 2011 and 2010.

While management believes that it is diligent in its evaluation of the adequacy of the allowance for doubtful accounts, an unexpected event, such as the bankruptcy filing of a major customer, could have an adverse effect on our future financial results. A hypothetical increase of 0.1% in our bad debt expense as a percentage of sales in 2012 would have resulted in a decrease in reported operating income of approximately \$0.4 million, and a decrease in our reported net income of approximately \$0.3 million.

Valuation of Intangible Assets and Goodwill

Goodwill and intangible assets amounted to \$1,574.2 million and \$941.3 million at March 31, 2012 and 2011, respectively. At March 31, 2012 and 2011, goodwill and intangible assets were apportioned among similar product groups within our two operating segments as follows:

	March 31, 2012			March 31, 2011		
	Over-the-Counter Healthcare	Household Cleaning	Consolidated	Over-the-Counter Healthcare	Household Cleaning	Consolidated
<i>(In thousands)</i>						
Goodwill	\$ 166,313	\$ 7,389	\$ 173,702	\$ 147,507	\$ 7,389	\$ 154,896
Intangible assets, net						
Indefinite-lived:						
Analgesics	342,164	—	342,164	—	—	—
Cough & Cold	185,453	—	185,453	185,453	—	185,453
Gastrointestinal	214,060	—	214,060	75,866	—	75,866
Eye & Ear Care	172,552	—	172,552	95,980	—	95,980
Dermatologicals	149,927	—	149,927	149,927	—	149,927
Oral Care	61,438	—	61,438	61,438	—	61,438
Other OTC	—	—	—	—	—	—
Household Cleaning	—	119,820	119,820	—	119,820	119,820
Total indefinite-lived intangible assets, net	1,125,594	119,820	1,245,414	568,664	119,820	688,484
Finite-lived:						
Analgesics	4,585	—	4,585	—	—	—
Cough & Cold	17,803	—	17,803	18,225	—	18,225
Gastrointestinal	27,690	—	27,690	—	—	—
Eye & Ear Care	9,109	—	9,109	9,645	—	9,645
Dermatologicals	7,651	—	7,651	9,382	—	9,382
Oral Care	19,880	—	19,880	16,353	—	16,353
Other OTC	38,734	—	38,734	12,872	—	12,872
Household Cleaning	—	29,656	29,656	—	31,400	31,400
Total finite-lived intangible assets, net	125,452	29,656	155,108	66,477	31,400	97,877
Total intangible assets, net	1,251,046	149,476	1,400,522	635,141	151,220	786,361
	\$ 1,417,359	\$ 156,865	\$ 1,574,224	\$ 782,648	\$ 158,609	\$ 941,257

The increase in goodwill of \$18.8 million for 2012 was due to goodwill of \$20.0 million resulting from the GSK Brands acquisition, partially offset by \$1.2 million of Blacksmith escrow settlement discussed in Note 7 to the Consolidated Financial Statements in this Annual Report on Form 10-K. The increase in the indefinite-lived intangible assets of \$556.9 million for 2012 was due to the GSK Brands acquisition. The increase in the finite-lived intangible assets of \$57.2 million for 2012 was due to \$67.2 million of finite-lived assets acquired from GSK, offset by amortization of \$10.0 million.

Our *Chloraseptic*, *Clear Eyes*, *Compound W*, *Dramamine*, *Efferdent*, *Luden's*, *PediaCare*, *BC*, *Goody's*, *Ecotrin*, *Beano*, *Gaviscon*, *Phazyme*, *Tagamet*, *Fiber Choice*, *Sominex*, and *Debrox* brands comprise the majority of the value of the intangible assets within the OTC Healthcare segment. The *Chore Boy*, *Comet* and *Spic and Span* brands comprise substantially all of the intangible asset value within the Household Cleaning segment.

Goodwill and intangible assets comprise substantially all of our assets. Goodwill represents the excess of the purchase price over the fair value of assets acquired and liabilities assumed in a purchase business combination. Intangible assets generally represent our trademarks, brand names and patents. When we acquire a brand, we are required to make judgments regarding the value assigned to the associated intangible assets, as well as their respective useful lives. Management considers many factors both prior to and after the acquisition of an intangible asset in determining the value, as well as the useful life, assigned to each intangible asset that we acquire or continue to own and promote. The most significant factors are:

- **Brand History**
A brand that has been in existence for a long period of time (e.g., 25, 50 or 100 years) generally warrants a higher valuation and longer life (sometimes indefinite) than a brand that has been in existence for a very short period of time. A brand that has been in existence for an extended period of time generally has been the subject of considerable investment by its previous owner(s) to support product innovation and advertising and promotion.
- **Market Position**
Consumer products that rank number one or two in their respective market generally have greater name recognition and are known as quality product offerings, which warrant a higher valuation and longer life than products that lag in the marketplace.
- **Recent and Projected Sales Growth**
Recent sales results present a snapshot as to how the brand has performed in the most recent time periods and represent another factor in the determination of brand value. In addition, projected sales growth provides information about the strength and potential longevity of the brand. A brand that has both strong current and projected sales generally warrants a higher valuation and a longer life than a brand that has weak or declining sales. Similarly, consideration is given to the potential investment, in the form of advertising and promotion, which is required to reinvestigate a brand that has fallen from favor.
- **History of and Potential for Product Extensions**
Consideration also is given to the product innovation that has occurred during the brand's history and the potential for continued product innovation that will determine the brand's future. Brands that can be continually enhanced by new product offerings generally warrant a higher valuation and longer life than a brand that has always "followed the leader".

After consideration of the factors described above, as well as current economic conditions and changing consumer behavior, management prepares a determination of an intangible asset's value and useful life based on its analysis. Under accounting guidelines, goodwill is not amortized, but must be tested for impairment annually, or more frequently if an event occurs or circumstances change that would more likely than not reduce the fair value of the reporting unit below the carrying amount. In a similar manner, indefinite-lived assets are not amortized. They are also subject to an annual impairment test, or more frequently if events or changes in circumstances indicate that the asset may be impaired. Additionally, at each reporting period an evaluation must be made to determine whether events and circumstances continue to support an indefinite useful life. Intangible assets with finite lives are amortized over their respective estimated useful lives and must also be tested for impairment whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable and exceeds its fair value.

On an annual basis, during the fourth fiscal quarter, or more frequently if conditions indicate that the carrying value of the asset may not be recovered, management performs a review of both the values and, if applicable, useful lives assigned to goodwill and intangible assets and tests for impairment.

We report goodwill and indefinite-lived intangible assets in two operating segments: OTC Healthcare and Household Cleaning. We identify our reporting units in accordance with the FASB ASC Subtopic 280-10, which is at the brand level, and one level below the operating segment level. The carrying value and fair value for intangible assets and goodwill for a reporting unit are calculated based on key assumptions and valuation methodologies previously discussed. As a result, any material changes to these assumptions could require us to record additional impairment in the future.

Goodwill

As of March 31, 2012, we had 15 reporting units with goodwill, including six reporting units resulting from the acquisition of the GSK brands. The aggregate fair value exceeded the carrying value by 29.1%. Since the acquisition of the GSK brands occurred recently, the fair value of these reporting units approximates the carrying value. For the remaining reporting units, no individual reporting unit's fair value exceeded its carrying value by less than 5.0%.

As part of our annual test for impairment of goodwill, management estimates the discounted cash flows of each reporting unit, which is at the brand level, and one level below the operating segment level, to estimate their respective fair values. In performing this analysis, management considers the same types of information as listed below in regard to finite-lived intangible assets. In the event that the carrying amount of the reporting unit exceeds the fair value, management would then be required to allocate the estimated fair value of the assets and liabilities of the reporting unit as if the unit was acquired in a business combination, thereby revaluing the carrying amount of goodwill. Future events, such as competition, technological advances and reductions in advertising support for our trademarks and trade names, could cause subsequent evaluations to utilize different assumptions.

Indefinite-Lived Intangible Assets

At each reporting period, management analyzes current events and circumstances to determine whether the indefinite life classification for a trademark or trade name continues to be valid. If circumstances warrant a change to a finite life, the carrying value of the intangible asset would then be amortized prospectively over the estimated remaining useful life.

Management tests the indefinite-lived intangible assets for impairment by comparing the carrying value of the intangible asset to its estimated fair value. Since quoted market prices are seldom available for trademarks and trade names such as ours, we utilize present value techniques to estimate fair value. Accordingly, management's projections are utilized to assimilate all of the facts, circumstances and expectations related to the trademark or trade name and estimate the cash flows over its useful life. In performing this analysis, management considers the same types of information as listed below in regard to finite-lived intangible assets. Once that analysis is completed, a discount rate is applied to the cash flows to estimate fair value. In a manner similar to goodwill, future events, such as competition, technological advances and reductions in advertising support for our trademarks and trade names, could cause subsequent evaluations to utilize different assumptions.

Finite-Lived Intangible Assets

As mentioned above, when events or changes in circumstances indicate the carrying value of the assets may not be recoverable, management performs a review to ascertain the impact of events and circumstances on the estimated useful lives and carrying values of our trademarks and trade names. In connection with this analysis, management:

- Reviews period-to-period sales and profitability by brand;
- Analyzes industry trends and projects brand growth rates;
- Prepares annual sales forecasts;
- Evaluates advertising effectiveness;
- Analyzes gross margins;
- Reviews contractual benefits or limitations;
- Monitors competitors' advertising spend and product innovation;
- Prepares projections to measure brand viability over the estimated useful life of the intangible asset; and
- Considers the regulatory environment, as well as industry litigation.

If analysis of any of the aforementioned factors warrants a change in the estimated useful life of the intangible asset, management will reduce the estimated useful life and amortize the carrying value prospectively over the shorter remaining useful life. Management's projections are utilized to assimilate all of the facts, circumstances and expectations related to the trademark or trade name and estimate the cash flows over its useful life. In the event that the long-term projections indicate that the carrying value is in excess of the undiscounted cash flows expected to result from the use of the intangible assets, management is required to record an impairment charge. Once that analysis is completed, a discount rate is applied to the cash flows to estimate fair value. The impairment charge is measured as the excess of the carrying amount of the intangible asset over fair value as calculated using the discounted cash flow analysis. Future events, such as competition, technological advances and reductions in advertising support for our trademarks and trade names, could cause subsequent evaluations to utilize different assumptions.

Impairment Analysis

We estimate the fair value of our intangible assets and goodwill using a discounted cash flow method. This discounted cash flow methodology is a widely-accepted valuation technique to estimate fair value utilized by market participants in the transaction evaluation process and has been applied consistently. In addition, we considered our market capitalization at March 31, 2012, as compared to the aggregate fair values of our reporting units, to assess the reasonableness of our estimates pursuant to the discounted cash flow methodology. As a result of our analysis, we did not record an impairment charge in 2012.

During the three month period ended March 31, 2010, we recorded a \$2.8 million non-cash impairment charge to goodwill related to the *Cutex* brand, which was sold on September 1, 2010 and is included in the loss from discontinued operations for 2010. The impairment was the result of distribution losses and increased competition from private label store brands.

The discount rate utilized in the analyses, as well as future cash flows, may be influenced by such factors as changes in interest

rates and rates of inflation. Additionally, should the related fair values of goodwill and intangible assets continue to be adversely affected as a result of declining sales or margins caused by competition, changing consumer preferences, technological advances or reductions in advertising and promotional expenses, we may be required to record additional impairment charges in the future.

Stock-Based Compensation

The Compensation and Equity topic of the FASB ASC requires us to measure the cost of services to be rendered based on the grant-date fair value of the equity award. Compensation expense is to be recognized over the period during which an employee is required to provide service in exchange for the award, generally referred to as the requisite service period. Information utilized in the determination of fair value includes the following:

- Type of instrument (i.e., restricted shares vs. an option, warrant or performance shares);
- Strike price of the instrument;
- Market price of our common stock on the date of grant;
- Discount rates;
- Duration of the instrument; and
- Volatility of our common stock in the public market.

Additionally, management must estimate the expected attrition rate of the recipients to enable it to estimate the amount of non-cash compensation expense to be recorded in our financial statements. While management prepares various analyses to estimate the respective variables, a change in assumptions or market conditions, as well as changes in the anticipated attrition rates, could have a significant impact on the future amounts recorded as non-cash compensation expense. We recorded net non-cash compensation expense of \$3.1 million, \$3.6 million and \$2.1 million during 2012, 2011 and 2010, respectively. During 2011 and 2010, performance goals related to certain restricted stock grants were met and recorded accordingly. Assuming no changes in assumptions and no new awards authorized by the Compensation Committee of the Board of Directors, we expect to record non-cash compensation expense of approximately \$2.2 million during 2013. On May 9, 2012, the Compensation Committee of our Board of Directors granted 111,152 shares of restricted common stock units and stock options to acquire 422,962 shares of our common stock to certain executive officers and employees under the Plan.

Loss Contingencies

Loss contingencies are recorded as liabilities when it is probable that a liability has been incurred and the amount of such loss is reasonably estimable. Contingent losses are often resolved over longer periods of time and involve many factors including:

- Rules and regulations promulgated by regulatory agencies;
- Sufficiency of the evidence in support of our position;
- Anticipated costs to support our position; and
- Likelihood of a positive outcome.

Recent Accounting Pronouncements

In December 2011, the FASB issued guidance regarding disclosures about offsetting assets and liabilities. The new disclosure requirements mandate that entities disclose both gross and net information about instruments and transactions eligible for offset in the statement of financial position as well as instruments and transactions subject to an agreement similar to a master netting arrangement. In addition, the standard requires disclosure of collateral received and posted in connection with master netting agreements or similar arrangements. An entity will be required to disclose the following information for assets and liabilities within the scope of the new standard: (i) the gross amounts of those recognized assets and those recognized liabilities; (ii) the amounts offset to determine the net amounts presented in the statement of financial position; (iii) the net amounts presented in the statement of financial position; (iv) the amounts subject to an enforceable master netting arrangement or similar agreement not otherwise included in (ii); and (v) the net amount after deducting the amounts in (iv) from the amounts in (iii). The standard affects all entities with balances presented on a net basis in the financial statements, derivative assets and derivative liabilities, repurchase agreements, and financial assets and financial liabilities executed under a master netting or similar arrangement. This guidance is effective for annual reporting periods beginning on or after January 1, 2013, and interim periods within those annual periods. We do not expect the adoption of this new guidance to have a material impact on our Consolidated Financial Statements. However, our arrangement with GSK provides that, during the term of the arrangement, we will receive a net monthly remittance and, therefore we will be reporting a net amount due from GSK in our accounts receivable.

In June 2011, the FASB issued guidance regarding presentation of comprehensive income. Under the ASC Comprehensive Income topic, entities are allowed the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In both choices, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income, and a total amount

for comprehensive income. This guidance eliminates the option to present the components of other comprehensive income as part of the statement of changes in stockholders' equity. This guidance does not change the items that must be reported in other comprehensive income or when an item of other comprehensive income must be reclassified to net income.

In December 2011, the FASB issued guidance to defer the new requirement to present components of reclassifications of other comprehensive income on the face of the income statement. Based on this guidance, entities are still required to adopt either the single continuous statement or the two-statement approach required by the new guidance. However, entities should continue to report reclassifications out of accumulated other comprehensive income consistent with the requirements in effect before the adoption of the new standard (i.e., by component of other comprehensive income, either by displaying each component on a gross basis on the face of the appropriate financial statement or by displaying each component net of other changes on the face of the appropriate financial statement with the gross change disclosed in the notes). The new guidance and this deferral are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. Early adoption is permitted, but full retrospective application is required. The December 2011 deferral of the guidance issued in June 2011, as well as the June 2011 guidance, are effective at the same time. We do not expect that the adoption of this new guidance will have a material impact on our Consolidated Financial Statements.

In September 2011, the FASB issued guidance regarding testing goodwill for impairment. The new guidance is intended to simplify how entities test goodwill for impairment. The new guidance permits an entity to first assess qualitative factors to determine whether it is "more-likely-than-not" that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test described in the ASC Intangibles-Goodwill and Other topic. The more-likely-than-not threshold is defined as having a likelihood of more than 50%. The new guidance is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. Early adoption is permitted. We do not expect that the adoption of this new guidance will have a material impact on our Consolidated Financial Statements.

In May 2011, the FASB issued guidance on fair value measurement. The ASC Fair Value Measurement topic amended the requirements for measuring fair value and for disclosing information about fair value measurements, including a consistent meaning of the term "fair value". The new guidance states that the concepts of highest and best use and valuation premise are only relevant when measuring the fair value of non-financial assets (that is, it does not apply to financial assets or any liabilities). The disclosure requirements have been enhanced, with the most significant change requiring entities, for their recurring Level 3 fair value measurements, to disclose quantitative information about unobservable inputs used, a description of the valuation processes used by the entity, and a qualitative discussion about the sensitivity of the measurements. New disclosures are required about the use of a non-financial asset measured or disclosed at fair value if its use differs from its highest and best use. In addition, entities must report the level in the fair value hierarchy of assets and liabilities not recorded at fair value but where fair value is disclosed. This guidance is effective during interim and annual periods beginning after December 15, 2011 and is required to be applied prospectively. The adoption of this new guidance did not have a material impact on our Consolidated Financial Statements.

We have reviewed and continue to monitor the actions of the various financial and regulatory reporting agencies and are currently not aware of any other pronouncement that could have a material impact on our consolidated financial position, results of operations or cash flows.

Results of Operations

2012 compared to 2011

Revenues	2012		2011		Increase (Decrease)	
	\$	%	\$	%	\$	%
Analgesics	18,930	4.3	3,063	0.9	15,867	518.0
Cough & Cold	116,669	26.4	75,013	22.3	41,656	55.5
Gastrointestinal	29,489	6.7	4,067	1.2	25,422	625.1
Eye & Ear Care	74,363	16.9	70,724	21.0	3,639	5.1
Dermatologicals	52,592	11.9	51,398	15.3	1,194	2.3
Oral Care	46,551	10.6	26,518	7.9	20,033	75.5
Other OTC	6,407	1.4	3,802	1.1	2,605	68.5
Total OTC Healthcare Revenues	345,001	78.2	234,585	69.7	110,416	47.1
Household Cleaning	96,084	21.8	101,925	30.3	(5,841)	(5.7)
Consolidated Revenues	\$ 441,085	100.0	\$ 336,510	100.0	\$ 104,575	31.1

Revenues for 2012 were \$441.1 million, an increase of \$104.6 million, or 31.1%, versus 2011. Revenues for the OTC Healthcare segment increased versus the prior year primarily due to the impact of a full year of Blacksmith and *Dramamine* and the acquisition of 15 GSK brands in 2012. Revenues for the Household Cleaning segment declined 5.7% during 2012 versus 2011. Revenues from customers outside of North America, which represent 3.5% of total revenues, increased by \$1.1 million, or 7.5%, during 2012 versus 2011.

OTC Healthcare Segment

Revenues for the OTC Healthcare segment increased \$110.4 million, or 47.1%, during 2012 versus 2011. Acquisitions of the Blacksmith and *Dramamine* brands added \$72.1 million of revenue and the acquired GSK brands added \$30.4 million, while our legacy OTC Healthcare brands contributed to the remainder of the net revenue increase. Revenue increases for *Clear Eyes*, *Compound W*, *The Doctor's* and *Little Remedies* were partially offset by revenue decreases in our other OTC Healthcare brands. We believe our core OTC Healthcare brands have continued to benefit from increased advertising and promotional investment, which has translated into organic sales growth.

Household Cleaning Segment

Revenues for the Household Cleaning segment decreased \$5.8 million, or 5.7%, during 2012 versus 2011. *Comet* revenues decreased primarily due to softer consumer consumption of non-abrasive products. *Chore Boy* and *Spic and Span* revenues increased as a result of increased promotional activity, and expanded distribution and consumer demand for *Spic and Span* sprays and *Chore Boy* copper scrubbers.

Cost of Sales	2012	%	2011	%	Increase (Decrease)	%
OTC Healthcare	\$ 143,151	41.5	\$ 97,710	41.7	\$ 45,441	46.5
Household Cleaning	70,550	73.4	67,922	66.6	2,628	3.9
	<u>\$ 213,701</u>	<u>48.4</u>	<u>\$ 165,632</u>	<u>49.2</u>	<u>\$ 48,069</u>	<u>29.0</u>

Cost of sales increased \$48.1 million, or 29.0% during 2012 versus 2011. As a percent of total revenue, cost of sales decreased from 49.2% in 2011 to 48.4% in 2012. The decrease in cost of sales as a percent of revenues was primarily due to the step-up adjustments related to the inventory valuation of the acquired Blacksmith and *Dramamine* brands in 2011 of \$7.3 million, while the step-up adjustment related to the GSK brands amounted to \$1.8 million in 2012. Additionally, cost of sales as a percentage of revenues decreased due to the change in product mix associated with the acquired GSK brands, which have a lower cost of sales, offset by the higher cost of sales for the Household Cleaning products.

OTC Healthcare Segment

Cost of sales for the OTC Healthcare segment increased \$45.4 million, or 46.5%, during 2012 versus 2011. As a percent of revenues, cost of sales in the OTC Healthcare segment decreased from 41.7% during 2011 to 41.5% during 2012. The reduction in cost of sales as a percentage of revenues is primarily attributable to the acquired GSK brands and the full year impact of *Dramamine*, which are lower cost products, partially offset by the higher cost products acquired from Blacksmith brands for the full year of 2012. Additionally, the inventory step-up adjustment of \$1.8 million in 2012 related to the GSK brands was lower than the inventory step-up adjustment in 2011 related to the Blacksmith brands and *Dramamine*.

Household Cleaning Segment

Cost of sales for the Household Cleaning segment increased \$2.6 million, or 3.9%, during 2012 versus 2011. As a percent of Household Cleaning revenues, cost of sales increased from 66.6% during 2011 to 73.4% during 2012. The increase in cost of sales percentage was the result of higher product costs associated with promotional products and other discounting.

Gross Profit	2012	%	2011	%	Increase (Decrease)	%
OTC Healthcare	\$ 201,850	58.5	\$ 136,875	58.3	\$ 64,975	47.5
Household Cleaning	25,534	26.6	34,003	33.4	(8,469)	(24.9)
	<u>\$ 227,384</u>	<u>51.6</u>	<u>\$ 170,878</u>	<u>50.8</u>	<u>\$ 56,506</u>	<u>33.1</u>

Gross profit during 2012 increased \$56.5 million, or 33.1%, versus 2011. As a percent of total revenue, gross profit increased from 50.8% in 2011 to 51.6% in 2012. The increase in gross profit as a percent of revenues was primarily due to the higher gross profit recognized as a result of the larger percentage of overall sales of OTC Healthcare products, which provide a higher gross profit

margin than the Household Cleaning products.

OTC Healthcare Segment

Gross profit for the OTC Healthcare segment increased \$65.0 million, or 47.5%, during 2012 versus 2011. As a percent of revenues, gross profit in the OTC Healthcare segment increased from 58.3% during 2011 to 58.5% during 2012. The full year impact in 2012 of the Blacksmith and *Dramamine* acquisitions increased gross profit by \$36.1 million and the acquired GSK brands in 2012 contributed \$18.4 million. The remainder of the increase resulted from higher sales volume of our legacy OTC Healthcare brands as well as the reduction in the amount recognized for the step-up adjustments in 2012 versus 2011. The increase in gross profit percentage was primarily the result of the reduction in the step-up adjustment, higher margins on the acquired *Dramamine* brand and slightly higher margins from our legacy OTC Healthcare brands, offset by lower margins on the acquired Blacksmith brands.

Household Cleaning Segment

Gross profit for the Household Cleaning segment decreased \$8.5 million, or 24.9%, during 2012 versus 2011. As a percent of Household Cleaning revenues, gross profit decreased from 33.4% during 2011 to 26.6% during 2012. The decrease in gross profit percentage was the result of higher product costs associated with promotional products and other discounting in the *Comet* brand.

Contribution Margin	2012	%	2011	%	Increase (Decrease)	%
OTC Healthcare	\$ 149,955	43.5	\$ 100,123	42.7	\$ 49,832	49.8
Household Cleaning	20,302	21.1	27,858	27.3	(7,556)	(27.1)
	<u>\$ 170,257</u>	<u>38.6</u>	<u>\$ 127,981</u>	<u>38.0</u>	<u>\$ 42,276</u>	<u>33.0</u>

Contribution margin, a non-GAAP financial measure, is defined as gross profit less advertising and promotional expenses, and is discussed further in Note 18 to the Consolidated Financial Statements. Contribution margin for 2012 increased \$42.3 million, or 33.0%, versus 2011. The contribution margin increase was primarily the result of the higher gross profit previously discussed, offset by higher advertising and promotional spending. The acquired Blacksmith, *Dramamine*, and GSK brands contributed \$40.7 million to total contribution margin. The increase in advertising and promotional spending was primarily attributable to the acquired brands.

OTC Healthcare Segment

Contribution margin for the OTC Healthcare segment increased \$49.8 million, or 49.8%, during 2012 versus 2011. The contribution margin increase was the result of the increase in gross margin as previously discussed, offset by a \$15.1 million, or 41.2%, increase in advertising and promotional spending, of which \$13.9 million related to the acquired Blacksmith, GSK and *Dramamine* brands.

Household Cleaning Segment

Contribution margin for the Household Cleaning segment decreased \$7.6 million, or 27.1%, during 2012 versus 2011. The contribution margin decrease was the result of the decrease in gross profit as previously discussed, offset by a decrease in advertising and promotional spending for the *Comet* brand.

General and Administrative

General and administrative expenses were \$56.7 million for 2012 versus \$42.0 million for 2011. The increase in expense was due primarily to \$15.5 million in costs associated with the acquisition of the GSK brands, including \$1.7 million in costs associated with the unsolicited proposal to acquire all of the common stock of the Company.

Depreciation and Amortization

Depreciation and amortization expense was \$10.7 million for 2012 versus \$9.9 million for 2011. The increase is primarily due to higher amortization related to the acquired GSK brands in 2012 and, to a lesser extent, the full year of amortization from the acquired Blacksmith brands in 2011.

Impairment of Intangible Assets and Goodwill

During the fourth quarter of 2012 and 2011, we performed our annual impairment analysis of intangible assets and goodwill. No impairment charges were recorded in 2012 or 2011.

Interest Expense

Net interest expense was \$41.3 million during 2012 versus \$27.3 million during 2011. The increase in interest expense was primarily the result of a higher level of indebtedness incurred as a result of the acquisition of the GSK Brands. The average cost

of funds remained constant at approximately 6.7% for 2011 and 2012, while the average indebtedness increased from \$410.0 million during 2011 to \$621.1 million during 2012.

Gain on Settlement

On June 15, 2011, we received a settlement payment of \$8.0 million in resolution of a pending litigation matter. We incurred costs of \$2.9 million in pursuing this matter, which we initiated for legal malpractice, breach of contract and breach of fiduciary duty against a law firm and two individual lawyers who had previously provided legal representation to us. Therefore, during 2012, we recorded a pre-tax gain on settlement of \$5.1 million net of costs incurred, which is included in other (income) expense, as this gain did not relate to our ongoing operations.

Loss on Extinguishment of Debt

In January 2012, we made a payment of \$184.0 million to fully repay our 2010 Senior Term Loan as result of the entry into the new senior secured credit facilities described in Note 10 to our Consolidated Financial Statements. In connection with the payoff of the 2010 Senior Term Loan, we recognized a \$5.4 million loss on the extinguishment of debt for 2012.

Income Taxes

The provision for income taxes from continuing operations during 2012 was \$23.9 million versus \$19.3 million in 2011. The effective tax rate on pretax income from continuing operations was 39.2% during 2012 versus 39.9% during 2011. The 2012 tax rate reflects the impact of non-deductible compensation of \$1.3 million and a non-cash benefit of \$1.2 million for expected lower future state taxes. The 2011 tax rate reflects the impact of non-deductible transaction costs for the Blacksmith acquisition and a non-cash tax charge of \$0.3 million to our deferred tax liability for expected higher future state taxes.

2011 compared to 2010

Revenues	2011	%	2010	%	Increase (Decrease)	%
Analgesics	\$ 3,063	0.9	\$ 3,360	1.2	\$ (297)	(8.8)
Cough & Cold	75,013	22.3	45,853	15.7	29,160	63.6
Gastrointestinal	4,067	1.2	—	—	4,067	—
Eye & Ear Care	70,724	21.0	65,274	22.3	5,450	8.3
Dermatologicals	51,398	15.3	47,240	16.1	4,158	8.8
Oral Care	26,518	7.9	16,660	5.7	9,858	59.2
Other OTC	3,802	1.1	3,519	1.2	283	8.0
Total OTC Healthcare Revenues	234,585	69.7	181,906	62.2	52,679	29.0
Household Cleaning	101,925	30.3	110,696	37.8	(8,771)	(7.9)
Consolidated Revenues	\$ 336,510	100.0	\$ 292,602	100.0	\$ 43,908	15.0

Revenues for fiscal 2011 were \$336.5 million, an increase of \$43.9 million, or 15.0%, versus 2010. Revenues for the OTC Healthcare segment increased versus the prior year primarily due to the acquisitions of Blacksmith and *Dramamine*. Revenues for the Household Cleaning segment declined 7.9% during 2011 versus 2010. Revenues from customers outside of North America, which represented 4.2% of total revenues in 2011, increased by \$1.7 million, or 13.6%, during 2011 versus 2010.

OTC Healthcare Segment

Revenues for the OTC Healthcare segment increased \$52.7 million, or 29.0%, during 2011 versus 2010. Acquisitions of the Blacksmith and *Dramamine* brands added \$38.8 million of revenue, while our legacy OTC Healthcare brands contributed to the remainder of the net revenue increase. Revenue increases for *Clear Eyes*, *Chloraseptic*, *Compound W*, and *Little Remedies* were partially offset by a revenue decline for *The Doctor's*. *The Doctor's* revenues decreased due to a loss of distribution at a major customer. *Clear Eyes* revenues increased primarily due to the launch of new products. *Chloraseptic* revenues increased as the result of a higher number of cold and flu incidents. *Compound W* revenues increased due to the launch of Skin Tags products in Canada and increased consumer consumption, particularly behind the non-cryogenic products. *Little Remedies* revenues increased as the result of new products, distribution gains and increased consumer consumption of its non-medicated pediatric products.

Household Cleaning Segment

Revenues for the Household Cleaning segment decreased \$8.8 million, or 7.9%, during 2011 versus 2010. *Comet* revenues decreased primarily due to softer consumer consumption of bathroom spray. *Chore Boy* revenues declined as a result of weaker consumer consumption and lost distribution. *Spic and Span* revenues decreased due to lost distribution.

Cost of Sales	2011		2010		Increase (Decrease)	
		%		%		%
OTC Healthcare	\$ 97,710	41.7	\$ 67,040	36.9	\$ 30,670	45.7
Household Cleaning	67,922	66.6	72,118	65.1	(4,196)	(5.8)
	<u>\$ 165,632</u>	<u>49.2</u>	<u>\$ 139,158</u>	<u>47.6</u>	<u>\$ 26,474</u>	<u>19.0</u>

Cost of sales during 2011 increased \$26.5 million, or 19.0%, versus 2010. As a percent of total revenue, cost of sales increased from 47.6% in 2010 to 49.2% in 2011. The increase in cost of sales was primarily due to a charge of \$7.3 million for step-up adjustments relating to acquired Blacksmith and *Dramamine* brands, \$5.9 million due to a change in product mix associated with the acquisitions of Blacksmith brands, which carry a higher cost of sales percentage, and higher product costs in the Household Cleaning segment for promotional activities. The cost of sales percentage increased 1.6% primarily due to the step-up adjustments from the acquisitions, mix associated with the acquired Blacksmith brands and Household Cleaning promotional activities offset by mix improvement with OTC Healthcare products.

OTC Healthcare Segment

Cost of sales for the OTC Healthcare segment increased \$30.7 million, or 45.7%, during 2011 versus 2010. The cost of sales increase was the result of a \$7.3 million charge for step-up adjustments in inventory relating to acquired Blacksmith and *Dramamine* brands, \$5.9 million in increased costs due to the acquired Blacksmith and *Dramamine* brands, which carry a higher cost of sales percentage. The cost of sales percentage increased 4.8% primarily due to the step-up adjustments of 3.1% and the higher cost of sales percentage of the acquired brands.

Household Cleaning Segment

Cost of sales for the Household Cleaning segment decreased \$4.2 million, or 5.8%, during 2011 versus 2010. The cost of sales decrease was the result of a decrease in sales of \$8.8 million, offset by higher product costs in the Household Cleaning segment for promotional activities, which increased cost of sales by 1.5%.

Gross Profit	2011		2010		Increase (Decrease)	
		%		%		%
OTC Healthcare	\$ 136,875	58.3	\$ 114,866	63.1	\$ 22,009	19.2
Household Cleaning	34,003	33.4	38,578	34.9	(4,575)	(11.9)
	<u>\$ 170,878</u>	<u>50.8</u>	<u>\$ 153,444</u>	<u>52.4</u>	<u>\$ 17,434</u>	<u>11.4</u>

Gross profit during 2011 increased \$17.4 million, or 11.4%, versus 2010. As a percent of total revenue, gross profit decreased from 52.4% in 2010 to 50.8% in 2011. The decrease in gross profit as a percent of revenues was primarily due to a charge of \$7.3 million resulting from the step-up adjustments related to the inventory valuation of the acquired Blacksmith and *Dramamine* brands and to the acquired Blacksmith brands, which decreased total gross profit percentage by 1.7%.

OTC Healthcare Segment

Gross profit for the OTC Healthcare segment increased \$22.0 million, or 19.2%, during 2011 versus 2010. As a percent of revenues, gross profit in the OTC Healthcare segment decreased from 63.1% during 2010 to 58.3% during 2011. The acquisitions of Blacksmith and *Dramamine* brands increased gross profit by \$18.0 million, while the remainder of the increase resulted from a higher sales volume of our legacy OTC Healthcare brands. The decrease in gross profit percentage was primarily the result of the Blacksmith brands acquired, as well as a \$3.1 million benefit for royalties received as part of a legal settlement related to our oral care business in 2010, which did not occur in 2011.

Household Cleaning Segment

Gross profit for the Household Cleaning segment decreased \$4.6 million, or 11.9%, during 2011 versus 2010. As a percent of Household Cleaning revenues, gross profit decreased from 34.9% during 2010 to 33.4% during 2011. The decrease in gross profit percentage was the result of higher product costs associated with promotional products and other discounting.

Contribution Margin	2011		2010		Increase (Decrease)	
	\$	%	\$	%	\$	%
OTC Healthcare	\$ 100,123	42.7	\$ 90,602	49.8	\$ 9,521	10.5
Household Cleaning	27,858	27.3	31,919	28.8	(4,061)	(12.7)
	<u>\$ 127,981</u>	<u>38.0</u>	<u>\$ 122,521</u>	<u>41.9</u>	<u>\$ 5,460</u>	<u>4.5</u>

Contribution margin, a non-GAAP financial measure, is defined as gross profit less advertising and promotional expenses, and is discussed further in Note 18 to the Consolidated Financial Statements. Contribution margin for 2011 increased \$5.5 million, or 4.5%, versus 2010. The contribution margin increase was primarily the result of the higher gross profit previously discussed, offset by higher advertising and promotional spending. The acquired Blacksmith and *Dramamine* brands contributed \$7.0 million to contribution margin in 2011. The increase in advertising and promotional spending was primarily attributable to increases in media support and market research primarily for the OTC Healthcare segment.

OTC Healthcare Segment

Contribution margin for the OTC Healthcare segment increased \$9.5 million, or 10.5%, during 2011 versus 2010. The contribution margin increase was the result of the increase in gross margin as previously discussed, offset by a \$12.5 million, or 51.5%, increase in advertising and promotional spending, of which \$11.0 million related to the acquired Blacksmith and *Dramamine* brands.

Household Cleaning Segment

Contribution margin for the Household Cleaning segment decreased \$4.1 million, or 12.7%, during 2011 versus 2010. The contribution margin decrease was the result of the decrease in gross profit as previously discussed, offset by a decrease in advertising and promotional spending for the *Comet* brand.

General and Administrative

General and administrative expenses were \$42.0 million for 2011 versus \$34.2 million for 2010. The increase in expense was due primarily to \$7.7 million in costs associated with the acquisitions of Blacksmith and *Dramamine*.

Depreciation and Amortization

Depreciation and amortization expense was \$9.9 million for 2011 versus \$10.0 million for 2010.

Impairment of Intangible Assets and Goodwill

During the fourth quarters of 2011 and 2010, we performed our annual impairment analysis of intangible assets and goodwill. No impairment charges were recorded in 2011. However, in 2010, we did record a \$2.8 million pre-tax impairment charge related to the goodwill of the *Cutex* brand. Since we divested this brand in September 2010, this charge is included in the loss from discontinued operations for 2010.

Interest Expense

Net interest expense was \$27.3 million during 2011 versus \$22.9 million during 2010. The increase in interest expense was primarily the result of a higher level of indebtedness combined with an increase of interest rates on our senior bank debt. The average cost of funds increased from 6.5% for 2010 to 6.7% for 2011, while the average indebtedness increased from \$353.2 million during 2010 to \$410.0 million during 2011.

Loss on Extinguishment of Debt

In March 2010, we retired our Tranche B Term Loan facility with an original maturity date of April 6, 2011. In addition, in March 2010, we repaid a portion and, in April 2010, redeemed in full the remaining Senior Subordinated Notes due in 2012, which bore interest at 9.25% with a maturity date of April 15, 2012. We recognized a \$0.3 million loss on the extinguishment of the Tranche B Term Loan facility for 2011. During 2010, we refinanced our long-term debt with a new senior credit facility and senior notes. As a result of the refinancing, we incurred \$2.7 million of expense related to the extinguished debt. The expense consisted of a \$2.2 million non-cash charge and a \$0.5 million premium paid for tendered Senior Subordinated Notes.

Income Taxes

The provision for income taxes from continuing operations during 2011 was \$19.3 million versus \$20.7 million in 2010. The effective tax rate on pretax income from continuing operations was 39.9% during 2011 versus 39.2% during 2010. The 2011 tax rate reflects the impact of non-deductible transaction costs for the Blacksmith acquisition and a non-cash tax charge of \$0.3 million to our deferred tax liability for expected higher future state taxes. The 2010 tax rate reflects the impact of a \$0.6 million non-cash charge to our deferred tax liability for higher future state taxes. The increase in the deferred effective tax rate for 2011 is a result of higher inventory balances located in certain state tax jurisdictions for Blacksmith and *Dramamine*. The increase in the deferred

tax rate for 2010 was due to the divestiture of the shampoo business.

Liquidity and Capital Resources

Liquidity

We have financed and expect to continue to finance our operations with a combination of borrowings and funds generated from operations. Our principal uses of cash are for operating expenses, debt service, acquisitions, working capital and capital expenditures.

On March 24, 2010, we entered into a new \$150.0 million Senior Secured Term Loan Facility with a maturity date of March 24, 2016 (the "2010 Senior Term Loan"), a \$30.0 million Senior Secured Revolving Credit Facility with a maturity date of March 24, 2015 (the "2010 Revolving Credit Facility" and collectively with the 2010 Senior Term Loan, the "2010 Credit Agreement") and issued Senior Notes of \$150.0 million that bear interest at 8.25% with a maturity date of April 1, 2018 (the "2010 Senior Notes").

In November 2010, we issued an additional \$100.0 million of 2010 Senior Notes and borrowed an additional \$115.0 million term loan under the 2010 Credit Agreement. In addition, in November 2010, we amended the 2010 Credit Agreement to increase our borrowing capacity under the 2010 Revolving Credit Facility by \$10.0 million to \$40.0 million. The proceeds from the preceding transactions, in addition to cash that was on hand, were used to purchase, redeem or otherwise retire all of the previously issued senior subordinated notes, to repay all amounts under our former credit facility and terminate the associated credit agreement, and fund the Blacksmith and *Dramamine* acquisitions.

On January 31, 2012, we issued \$250.0 million of 8.125% Senior Notes with a maturity date of February 1, 2020 (the "2012 Senior Notes") and also entered into a New Senior Secured Credit Facility, which consists of (i) a \$660.0 million term loan facility ("2012 Term Loan" with a seven-year maturity and (ii) a \$50.0 million asset-based revolving credit facility ("2012 ABL Revolver") with a five-year maturity. We used the net proceeds from the 2012 Senior Notes offering, together with the borrowings under the 2012 Term Loan, to finance the acquisition of the GSK Brands, to repay amounts borrowed under our 2010 Credit Agreement, to pay fees and expenses incurred in connection with these transactions and for general corporate purposes.

(In thousands)	Year Ended March 31,		
	2012	2011	2010
Net cash provided by (used in):			
Operating activities	\$ 67,452	\$ 86,670	\$ 59,427
Investing activities	(662,206)	(275,680)	7,320
Financing activities	600,434	161,247	(60,831)

2012 compared to 2011

Operating Activities

Net cash provided by operating activities was \$67.5 million for 2012 compared to \$86.7 million for 2011. The \$19.2 million decrease in net cash provided by operating activities was primarily the result of a net cash outflow of \$5.4 million related to working capital in 2012 compared to a net cash inflow of \$31.4 million related to working capital in 2011 which resulted in a \$36.8 million decrease in cash flow provided by working capital. This decrease was partially offset by a net increase of \$17.6 million in net income plus non-cash expenses in 2012 compared to 2011, including higher acquisition and public company defense costs of \$7.8 million in 2012 compared to 2011.

The increase in working capital in 2012 was primarily the result of higher accounts receivable due to the acquired GSK Brands and higher prepaid expenses, partially offset by higher accounts payable, accrued interest and lower inventory levels.

Consistent with 2011, our cash flow from operations in 2012 exceeded net income due to the substantial non-cash charges related to depreciation and amortization, increases in deferred income tax liabilities resulting from differences in the amortization of intangible assets and goodwill for income tax and financial reporting purposes, the amortization of certain deferred financing costs and debt discount, a recognized loss on the early extinguishment of debt, and stock-based compensation costs.

Investing Activities

Net cash used in investing activities was \$662.2 million for 2012 compared to \$275.7 million for 2011. The net cash used in investing activities during 2012 was primarily the result of the GSK Brands acquisition. The net cash used in investing activities

during 2011 was primarily the result of the Blacksmith and *Dramamine* acquisitions, partially offset by the proceeds received from the *Cutex* divestiture.

Financing Activities

Net cash provided by financing activities was \$600.4 million for 2012 compared to \$161.2 million for 2011. During 2012, we issued \$250.0 million of the 2012 Senior Notes, and borrowed \$660.0 million under our 2012 Term Loan. These borrowings were offset by voluntary principal payments against outstanding indebtedness of \$58.0 million in excess of required payments under the Credit Agreement governing the 2010 Senior Term Loan and \$25.0 million against the 2012 Term Loan, payment of \$184.0 million to fully repay the 2010 Senior Term Loan, and payment of \$33.3 million for deferred financing costs. At March 31, 2012, our outstanding indebtedness was \$1,135.0 million compared to \$492.0 million at March 31, 2011.

2011 compared to 2010

Operating Activities

Net cash provided by operating activities was \$86.7 million for 2011 compared to \$59.4 million for 2010. The \$27.3 million increase in net cash provided by operating activities was primarily the result of the net cash inflow of \$31.4 million related to working capital in 2011 compared to a net cash outflow of \$3.8 million related to working capital in 2010 which resulted in a \$35.2 million increase in working capital. This increase was partially offset by a net decrease of \$7.9 million in net income plus non-cash expenses in 2011 compared to 2010.

The decrease in working capital in 2011 was primarily the result of the acquisitions of Blacksmith and *Dramamine*, which resulted in higher accounts payable, accrued interest and other accrued expenses, partially offset by higher accounts receivable and inventory.

The acquired Blacksmith brands generated (i) \$6.1 million in cash which resulted from a corresponding decrease in accounts receivable, due to receipt of payments from customers whose payment terms were extended by Blacksmith prior to the acquisition, and (ii) \$10.8 million in inventory due to higher than normal inventory levels at the time of acquisition. Additionally, accrued liabilities increased primarily due to increased incentive compensation accruals and an increase in interest payable resulting from debt financing changes further described in the Financing Activities section below. As noted above, the net working capital decrease was primarily due to acquisition activity, and thus, notwithstanding additional acquisitions in 2012, are considered non-recurring charges.

Consistent with 2010, our cash flow from operations in 2011 exceeded net income due to the substantial non-cash charges related to depreciation and amortization of intangibles, increases in deferred income tax liabilities resulting from differences in the amortization of intangible assets and goodwill for income tax and financial reporting purposes, the amortization of certain deferred financing costs and stock-based compensation costs.

Investing Activities

Net cash used for investing activities was \$275.7 million for 2011 compared to net cash provided by investing activities of \$7.3 million for 2010. The net cash used for investing activities during 2011 was primarily the result of the Blacksmith and *Dramamine* acquisitions, partially offset by the proceeds received from the *Cutex* divestiture. Net cash provided by investing activities during 2010 was primarily due to the divestiture of the shampoo business, partially offset by the acquisition of property and equipment.

Financing Activities

Net cash provided by financing activities was \$161.2 million for 2011 compared to net cash used for financing activities of \$60.8 million for 2010. During 2011, we issued \$100.0 million of 2010 Senior Notes, and borrowed \$115.0 million under our 2010 Credit Agreement, which was partially offset by the redemption of the remaining \$28.1 million of Senior Subordinated Notes due in 2012 that bore interest at 9.25%. In addition, during 2011, we made a required principal payment of \$0.8 million on the 2010 Senior Term Loan plus unscheduled payments of \$21.2 million. At March 31, 2011, our outstanding indebtedness was \$492.0 million compared to \$328.1 million at March 31, 2010.

Capital Resources

On March 24, 2010, we retired our existing Senior Secured Term Loan Facility, which had a maturity date of April 6, 2011. In addition, on March 24, 2010, we repaid a portion and, on April 15, 2010, redeemed in full the remaining outstanding indebtedness under our previously outstanding Senior Subordinated Notes due in 2012, which bore interest at 9.25% with a maturity date of April 15, 2012. In March 2010, we entered into the 2010 Credit Agreement and issued the 2010 Senior Notes. This debt refinancing improved our liquidity position by increasing our borrowing capacity under our senior secured term loan and revolving credit facilities and extending the maturities of our indebtedness. However, under certain circumstances, contractual and legal restrictions, as well as the financial condition and operating requirements of our subsidiaries, could limit Prestige Brands, Inc.'s ability to obtain cash from our subsidiaries for the purpose of meeting our debt service obligations, including the payment of principal and interest on the 2010 Senior Notes. Additionally, we believe that the new debt better positions us to pursue acquisitions as part of our

growth strategy.

The 2010 Senior Term Loan included a discount to the lenders of \$1.8 million resulting in our receipt of net proceeds of \$148.2 million. The 2010 Senior Notes were issued at an aggregate face value of \$150.0 million with a discount to noteholders of \$2.2 million and net proceeds to us of \$147.8 million. The discount was offered to improve the yield to maturity to lenders reflective of market conditions at the time of the offering. In addition to the discount, we incurred \$7.3 million of costs primarily related to fees of bank arrangers and legal advisors, of which \$6.6 million was capitalized as deferred financing costs and \$0.7 million expensed. The deferred financing costs are being amortized over the term of the loan and notes.

In connection with the acquisition of Blacksmith, on November 1, 2010, we amended our existing debt agreements and increased the amount borrowed thereunder. Specifically, on November 1, 2010, we amended our 2010 Credit Agreement in order to allow us to (i) borrow an additional \$115.0 million as an incremental term loan, with the same maturity date and other terms and conditions as the 2010 Senior Term Loan under our Senior Secured Term Loan Facility and (ii) increase our borrowing capacity under our 2010 Revolving Credit Facility by \$10.0 million to \$40.0 million. On November 1, 2010, we also issued an additional \$100.0 million of 2010 Senior Notes.

On January 31, 2012, in connection with the acquisition of the GSK Brands, we (i) issued the 2012 Senior Notes in an aggregate principal amount of \$250.0 million, (ii) entered into the 2012 Term Loan with a seven-year maturity and the 2012 ABL Revolver with a five-year maturity. The 2012 Term Loan was issued with an original issue discount of 1.5% of the principal amount thereof, resulting in net proceeds to Prestige Brands of \$650.1 million. In addition to the discount, we incurred \$33.3 million in issuance costs, which were capitalized as deferred financing costs and are being amortized over the terms of the related loans and notes.

Additionally, in connection with the entry into the new senior secured credit facilities in January 2012, we terminated the 2010 Credit Agreement and repaid amounts due under the 2010 Senior Term Loan.

As of March 31, 2012, we had an aggregate of \$1,135.0 million of outstanding indebtedness, which consisted of the following:

- \$250.0 million of 8.25% 2010 Senior Notes due 2018;
- \$250.0 million of 8.125% 2012 Senior Notes due 2020; and
- \$635.0 million of borrowings under the 2012 Term Loan.

As of March 31, 2012, we had \$50.0 million of borrowing capacity under the 2012 ABL Revolver.

The 2010 Senior Term Loans bore interest at floating rates, based on either the prime rate, or at our option, the LIBOR rate, plus an applicable margin. The LIBOR rate option contained a floor rate of 1.5%. The 2010 Senior Term Loans were fully repaid during the year ended March 31, 2012.

The 2012 Term Loan bears interest at a rate per annum equal to an applicable margin plus, at our option, either (i) a base rate determined by reference to the highest of (a) the Federal Funds rate plus 0.50%, (b) the prime rate of Citibank, N.A., (c) the LIBOR rate determined by reference to the cost of funds for U.S. dollar deposits for an interest period of one month adjusted for certain additional costs, plus 1.00% and (d) a floor of 2.25% or (ii) a LIBOR rate determined by reference to the costs of funds for U.S. dollar deposits for the interest period relevant to such borrowing adjusted for certain additional costs provided that LIBOR shall not be lower than 1.25%.

Borrowings under the 2012 ABL Revolver bear interest at a rate per annum equal to an applicable margin, plus, at our option, either (i) a base rate determined by reference to the highest of (a) the Federal Funds rate plus 0.50%, (b) the prime rate of Citibank, N.A., (c) the LIBOR rate determined by reference to the cost of funds for U.S. dollar deposits for an interest period of one month adjusted for certain additional costs, plus 1.00% or (ii) a LIBOR rate determined by reference to the costs of funds for U.S. dollar deposits for the interest period relevant to such borrowing adjusted for certain additional costs. The initial applicable margin for borrowings under the 2012 ABL Revolver is 1.75% with respect to LIBOR borrowings and 0.75% with respect to base-rate borrowings. The applicable margin for borrowings under the 2012 ABL Revolver may be increased to 2.00% or 2.25% for LIBOR borrowings and 1.00% or 1.25% for base-rate borrowings, depending on average excess availability under such revolving credit facility during the prior fiscal quarter. In addition to paying interest on outstanding principal under the 2012 ABL Revolver, we are required to pay a commitment fee to the lenders under the 2012 ABL Revolver in respect of the unutilized commitments thereunder. The initial commitment fee rate is 0.50% per annum. The commitment fee rate will be reduced to 0.375% per annum at any time when the average daily unused commitments for the prior quarter is less than a percentage of total commitments in an amount set forth in the credit agreement covering the 2012 ABL Revolver.

At times, we utilize derivative financial instruments to mitigate the impact of changing interest rates associated with our long-term debt obligations. Although we do not enter into derivative financial instruments for trading purposes, all of our derivatives are straightforward over-the-counter instruments with liquid markets. The notional, or contractual, amount of our derivative financial instruments is used to measure the amount of interest to be paid or received and does not represent an actual liability. We account for these financial instruments as cash flow hedges.

Our debt facilities contain various financial covenants, including provisions that require us to maintain certain leverage, interest coverage and fixed charge ratios. The New Senior Secured Credit Facility and the Indenture governing the 2010 Senior Notes and the 2012 Senior Notes contain provisions that accelerate our indebtedness on certain changes in control and restrict us from undertaking specified corporate actions, including asset dispositions, acquisitions, payment of dividends and other specified payments, repurchasing our equity securities in the public markets, incurrence of indebtedness, creation of liens, making loans and investments and transactions with affiliates. Specifically, beginning with the quarter ending June 30, 2012, we must:

- Have a leverage ratio of less than 7.75 to 1.0 for the quarter ending June 30, 2012 (defined as, with certain adjustments, the ratio of our consolidated total net debt as of the last day of the fiscal quarter to our trailing twelve month consolidated net income before interest, taxes, depreciation, amortization, non-cash charges, and certain other items (“EBITDA”). Our leverage ratio requirement decreases over time to 3.50 to 1.0 for the quarter ending June 30, 2017, and remains level thereafter;
- Have an interest coverage ratio of greater than 1.5 to 1.0 for the quarter ending June 30, 2012 (defined as, with certain adjustments, the ratio of our consolidated EBITDA to our trailing twelve month consolidated cash interest expense). Our interest coverage requirement increases over time to 2.50 to 1.0 for the quarter ending June 30, 2017, and remains level thereafter; and
- Have a fixed charge ratio of greater than 1.0 to 1.0 for the quarter ending June 30, 2012 (defined as, with certain adjustments, the ratio of our consolidated EBITDA minus capital expenditures to our trailing twelve month consolidated interest paid, taxes paid and other specified payments). Our fixed charge requirement remains level throughout the term of the agreement.

At March 31, 2012, we were in compliance with the applicable financial and restrictive covenants under the New Senior Secured Credit Facility and the Indenture governing the 2010 Senior Notes and the 2012 Senior Notes. Additionally, management anticipates that in the normal course of operations, we will be in compliance with the financial and restrictive covenants during the ensuing year. During the year ended March 31, 2012, we made voluntary principal payments against outstanding indebtedness of \$58.0 million in excess of required payments under the 2010 Credit Agreement governing the 2010 Senior Term Loan. In accordance with the 2010 Credit Agreement, such payments were applied against the first four principal payments, and any remaining principal payments were applied ratably toward the remaining required principal payments. Subsequently, during 2012, we terminated the 2010 Credit Agreement and repaid the remaining balance. Additionally, during 2012, we made voluntary principal payments of \$25.0 million against outstanding indebtedness under the 2012 Term Loan. Therefore we are not required to make quarterly principal payments until March 2016.

Commitments

As of March 31, 2012, we had ongoing commitments under various contractual and commercial obligations as follows:

<i>(In millions)</i>	Payments Due by Period				
	Total	Less than 1 Year	1 to 3 Years	4 to 5 Years	After 5 Years
Contractual Obligations					
Long-term debt	\$ 1,135.0	\$ —	\$ —	\$ 8.0	\$ 1,127.0
Interest on long-term debt ⁽¹⁾	520.5	76.2	152.5	152.5	139.3
Purchase obligations:					
Inventory costs ⁽²⁾	72.1	65.2	2.2	2.1	2.6
Other costs ⁽³⁾	10.5	10.5	—	—	—
Operating leases	1.9	1.1	0.8	—	—
Total contractual cash obligations ⁽⁴⁾	\$ 1,740.0	\$ 153.0	\$ 155.5	\$ 162.6	\$ 1,268.9

(1) Represents the estimated interest obligations on the outstanding balances of the 2012 Term Loan, 2012 Senior Notes and

2010 Senior Notes, together, assuming scheduled principal payments (based on the terms of the loan agreements) are made and assuming a weighted average interest rate of 6.7%. Estimated interest obligations would be different under different assumptions regarding interest rates or timing of principal payments.

- (2) Purchase obligations for inventory costs are legally binding commitments for projected inventory requirements to be utilized during the normal course of our operations.
- (3) Purchase obligations for other costs are legally binding commitments for marketing, advertising and capital expenditures. Activity costs for molds and equipment to be paid, based solely on a per unit basis without any deadlines for final payment, have been excluded from the table because we are unable to determine the time period over which such activity costs will be paid.
- (4) We have excluded obligations related to uncertain tax positions because we cannot reasonably estimate when they will occur.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements or financing activities with special-purpose entities.

Inflation

Inflationary factors such as increases in the costs of raw materials, packaging materials, purchased product and overhead may adversely affect our operating results. Although we do not believe that inflation has had a material impact on our financial condition or results from operations for the three most recent fiscal years, a high rate of inflation in the future could have a material adverse effect on our business, financial condition or results from operations. The recent volatility in crude oil prices has had an adverse impact on transportation costs, as well as, certain petroleum based raw materials and packaging material. Although we take efforts to minimize the impact of inflationary factors, including raising prices to our customers, a high rate of pricing volatility associated with crude oil supplies may continue to have an adverse effect on our operating results.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), including, without limitation, information within Management’s Discussion and Analysis of Financial Condition and Results of Operations. The following cautionary statements are being made pursuant to the provisions of the PSLRA and with the intention of obtaining the benefits of the “safe harbor” provisions of the PSLRA. Although we believe that our expectations are based on reasonable assumptions, actual results may differ materially from those in the forward-looking statements.

Forward-looking statements speak only as of the date of this Annual Report on Form 10-K. Except as required under federal securities laws and the rules and regulations of the SEC, we do not intend to update any forward-looking statements to reflect events or circumstances arising after the date of this Annual Report on Form 10-K, whether as a result of new information, future events or otherwise. As a result of these risks and uncertainties, readers are cautioned not to place undue reliance on forward-looking statements included in this Annual Report on Form 10-K or that may be made elsewhere from time to time by, or on behalf of, us. All forward-looking statements attributable to us are expressly qualified by these cautionary statements.

These forward-looking statements generally can be identified by the use of words or phrases such as “believe,” “anticipate,” “expect,” “estimate,” “project,” “will be,” “will continue,” “will likely result,” or other similar words and phrases. Forward-looking statements and our plans and expectations are subject to a number of risks and uncertainties that could cause actual results to differ materially from those anticipated, and our business in general is subject to such risks. For more information, see “Risk Factors” contained in Item 1A. of this Annual Report on Form 10-K. In addition, our expectations or beliefs concerning future events involve risks and uncertainties, including, without limitation:

- General economic conditions affecting our products and their respective markets;
- Our ability to increase organic growth via new product introductions or line extensions;
- The high level of competition in our industry and markets (including, without limitation, vendor and stock keeping unit (“SKU”) rationalization and expansion of private label product offerings);

- Our ability to invest in research and development;
- Our dependence on a limited number of customers for a large portion of our sales;
- Our expectations regarding increased advertising and promotion spending for core GSK brands;
- Our expectations regarding the growth of our international sales;
- Disruptions in our distribution center;
- Acquisitions, dispositions or other strategic transactions diverting managerial resources, or incurrence of additional liabilities or integration problems associated with such transactions;
- Changing consumer trends or pricing pressures which may cause us to lower our prices;
- Increases in supplier prices and transportation and fuel charges;
- Our ability to protect our intellectual property rights;
- Shortages of supply of sourced goods or interruptions in the manufacturing of our products;
- Our level of indebtedness, and ability to service our debt;
- Any adverse judgments rendered in any pending litigation or arbitration;
- Our ability to obtain additional financing; and
- The restrictions imposed by our Senior Credit Facility and the indenture on our operations.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to changes in interest rates because our 2012 Term Loan is variable rate debt. Interest rate changes generally do not affect the market value of the 2012 Term Loan but do affect the amount of our interest payments and, therefore, our future earnings and cash flows, assuming other factors are held constant. At March 31, 2012, we had variable rate debt of approximately \$635.0 million under our 2012 Term Loan.

Holding other variables constant, including levels of indebtedness, a one percentage point increase in interest rates on our variable rate debt would have an adverse impact on pre-tax earnings and cash flows for the year ending March 31, 2012 of approximately \$6.4 million.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The supplementary data required by this Item are described in Part IV, Item 15 of this Annual Report on Form 10-K and are presented beginning on page 99.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Prestige Brands Holdings, Inc.

Audited Financial Statements

March 31, 2012

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders
Prestige Brands Holdings, Inc.

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, of stockholders' equity and comprehensive income and of cash flows present fairly, in all material respects, the financial position of Prestige Brands Holdings, Inc. and its subsidiaries at March 31, 2012 and 2011, and the results of their operations and their cash flows for each of the three years in the period ended March 31, 2012 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed under Item 15(a)(2) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of March 31, 2012, based on criteria established in *Internal Control - Integrated Framework*, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements and financial statement schedule, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on these financial statements, on the financial statement schedule, and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP

Salt Lake City, Utah
May 17, 2012

Prestige Brands Holdings, Inc.
Consolidated Statements of Operations

<i>(In thousands, except per share data)</i>	Year Ended March 31,		
	2012	2011	2010
Revenues			
Net sales	\$ 437,838	\$ 333,715	\$ 287,552
Other revenues	3,247	2,795	5,050
Total revenues	441,085	336,510	292,602
Cost of Sales			
Cost of sales (exclusive of depreciation shown below)	213,701	165,632	139,158
Gross profit	227,384	170,878	153,444
Operating Expenses			
Advertising and promotion	57,127	42,897	30,923
General and administrative	56,700	41,960	34,195
Depreciation and amortization	10,734	9,876	10,001
Total operating expenses	124,561	94,733	75,119
Operating income	102,823	76,145	78,325
Other (income) expense			
Interest income	(18)	(1)	(1)
Interest expense	41,338	27,318	22,936
Gain on settlement	(5,063)	—	—
Loss on extinguishment of debt	5,409	300	2,656
Total other expense	41,666	27,617	25,591
Income from continuing operations before income taxes	61,157	48,528	52,734
Provision for income taxes	23,945	19,349	20,664
Income from continuing operations	37,212	29,179	32,070
Discontinued Operations			
Income (loss) from discontinued operations, net of income tax	—	591	(112)
Gain (loss) on sale of discontinued operations, net of income tax	—	(550)	157
Net income	\$ 37,212	\$ 29,220	\$ 32,115
Basic earnings per share:			
Income from continuing operations	\$ 0.74	\$ 0.58	\$ 0.64
Income (loss) from discontinued operations and gain (loss) from sale of discontinued operations	—	—	—
Net income	\$ 0.74	\$ 0.58	\$ 0.64
Diluted earnings per share:			
Income from continuing operations	\$ 0.73	\$ 0.58	\$ 0.64
Income (loss) from discontinued operations and gain (loss) from sale of discontinued operations	—	—	—
Net income	\$ 0.73	\$ 0.58	\$ 0.64
Weighted average shares outstanding:			
Basic	50,270	50,081	50,013
Diluted	50,748	50,338	50,085

See accompanying notes.

Prestige Brands Holdings, Inc.
Consolidated Balance Sheets

(In thousands)

	March 31,	
	2012	2011
Assets		
Current assets		
Cash and cash equivalents	\$ 19,015	\$ 13,334
Accounts receivable, net	60,228	44,393
Inventories	51,113	39,751
Deferred income tax assets	5,283	5,292
Prepaid expenses and other current assets	11,396	4,812
Total current assets	147,035	107,582
Property and equipment, net	1,304	1,444
Goodwill	173,702	154,896
Intangible assets, net	1,400,522	786,361
Other long-term assets	35,713	6,635
Total Assets	<u>\$ 1,758,276</u>	<u>\$ 1,056,918</u>
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable	\$ 26,726	\$ 21,615
Accrued interest payable	13,889	10,313
Other accrued liabilities	23,308	22,280
Total current liabilities	63,923	54,208
Long-term debt		
Principal amount	1,135,000	492,000
Less unamortized discount	(11,092)	(5,055)
Long-term debt, net of unamortized discount	1,123,908	486,945
Deferred income tax liabilities	167,717	153,933
Total Liabilities	1,355,548	695,086
Commitments and Contingencies – Note 16		
Stockholders' Equity		
Preferred stock – \$0.01 par value		
Authorized – 5,000 shares		
Issued and outstanding – None	—	—
Preferred share rights	283	—
Common stock – \$0.01 par value		
Authorized – 250,000 shares		
Issued – 50,466 shares and 50,276 shares at March 31, 2012 and 2011, respectively	505	503
Additional paid-in capital	391,898	387,932
Treasury stock, at cost – 181 shares at March 31, 2012 and 160 shares at March 31, 2011	(687)	(416)
Accumulated other comprehensive loss, net of tax	(13)	—
Retained earnings (accumulated deficit)	10,742	(26,187)
Total Stockholders' Equity	402,728	361,832
Total Liabilities and Stockholders' Equity	<u>\$ 1,758,276</u>	<u>\$ 1,056,918</u>

See accompanying notes.

Prestige Brands Holdings, Inc.
Consolidated Statements of Changes in Stockholders'
Equity and Comprehensive Income

<i>(In thousands)</i>	Common Stock			Treasury Stock		Accumulated Other Comprehensive Income	Retained Earnings (Accumulated Deficit)	Totals
	Shares	Par Value	Additional Paid-in Capital	Shares	Amount			
Balances at March 31, 2009	50,060	\$ 501	\$ 382,803	124	\$ (63)	\$ (1,334)	\$ (87,522)	\$ 294,385
Stock-based compensation	94	1	1,224	—	—	—	—	1,225
<u>Components of comprehensive income:</u>								
Net income	—	—	—	—	—	—	32,115	32,115
Amortization of interest rate caps reclassified into earnings, net of income tax expense of \$818	—	—	—	—	—	1,334	—	1,334
Total comprehensive income	—	—	—	—	—	—	—	33,449
Balances at March 31, 2010	50,154	\$ 502	\$ 384,027	124	(63)	\$ —	\$ (55,407)	\$ 329,059
Stock-based compensation	—	—	3,575	—	—	—	—	3,575
Exercise of stock options	34	—	331	—	—	—	—	331
Issuance of shares related to restricted stock	88	1	(1)	—	—	—	—	—
Shares surrendered as payment of tax withholding	—	—	—	36	(353)	—	—	(353)
<u>Components of comprehensive income:</u>								
Net income	—	—	—	—	—	—	29,220	29,220
Total comprehensive income	—	—	—	—	—	—	—	29,220
Balances at March 31, 2011	50,276	\$ 503	\$ 387,932	160	\$ (416)	—	\$ (26,187)	\$ 361,832

See accompanying notes.

Prestige Brands Holdings, Inc.
Consolidated Statements of Changes in Stockholders'
Equity and Comprehensive Income

	Common Stock			Treasury Stock		Accumulated Other Comprehensive Income	Preferred Share Rights	Retained Earnings (Accumulated Deficit)	Totals
	Shares	Par Value	Additional Paid-in Capital	Shares	Amount				
Balances at March 31, 2011	50,276	\$ 503	\$ 387,932	160	\$ (416)	\$ —	\$ —	\$ (26,187)	\$ 361,832
Stock-based compensation	—	—	3,078	—	—	—	—	—	3,078
Exercise of stock options	87	1	888	—	—	—	—	—	889
Preferred share rights	—	—	—	—	—	—	283	(283)	—
Issuance of shares related to restricted stock	103	1	—	—	—	—	—	—	1
Shares surrendered as payment of tax withholding	—	—	—	21	(271)	—	—	—	(271)
<u>Components of comprehensive income:</u>									
Net income	—	—	—	—	—	—	—	37,212	37,212
Translation adjustments	—	—	—	—	—	(13)	—	—	(13)
Total comprehensive income	—	—	—	—	—	—	—	—	37,199
Balances at March 31, 2012	50,466	\$ 505	\$ 391,898	181	\$ (687)	\$ (13)	\$ 283	\$ 10,742	\$ 402,728

See accompanying notes.

Prestige Brands Holdings, Inc.
Consolidated Statements of Cash Flows

<i>(In thousands)</i>	Year Ended March 31,		
	2012	2011	2010
Operating Activities			
Net income	\$ 37,212	\$ 29,220	\$ 32,115
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	10,734	10,108	11,450
Loss (gain) on sale of discontinued operations	—	890	(253)
Deferred income taxes	13,793	9,324	11,012
Amortization of deferred financing costs	1,630	1,043	1,926
Impairment of goodwill and intangible assets	—	—	2,751
Stock-based compensation costs	3,078	3,575	2,085
Loss on extinguishment of debt	5,409	300	2,166
Amortization of debt discount	1,030	702	—
Loss on disposal of equipment	—	153	—
Changes in operating assets and liabilities, net of effects from acquisitions			
Accounts receivable	(15,854)	4,918	6,404
Inventories	3,710	12,443	(3,351)
Prepaid expenses and other current assets	(3,009)	154	(3,559)
Accounts payable	5,127	1,784	(3,127)
Accrued liabilities	4,592	12,056	(192)
Net cash provided by operating activities	<u>67,452</u>	<u>86,670</u>	<u>59,427</u>
Investing Activities			
Purchases of equipment	(606)	(655)	(673)
Proceeds from sale of property and equipment	—	12	—
Proceeds from sale of discontinued operations	—	4,122	7,993
Acquisition of Blacksmith, net of cash acquired	—	(202,044)	—
Proceeds from escrow of Blacksmith acquisition	1,200	—	—
Acquisition of Dramamine	—	(77,115)	—
Acquisition of GSK Brands	(662,800)	—	—
Net cash (used in) provided by investing activities	<u>(662,206)</u>	<u>(275,680)</u>	<u>7,320</u>
Financing Activities			
Proceeds from issuance of debt	—	—	296,046
Proceeds from issuance of Senior Notes	250,000	100,250	—
Proceeds from issuance of 2012 Term Loan and 2010 Term Loan	650,100	112,936	—
Repayment of 2010 Term Loan	(242,000)	—	—
Payment of deferred financing costs	(33,284)	(830)	(6,627)
Repayment of long-term debt	(25,000)	(51,087)	(350,250)
Proceeds from exercise of stock options	889	331	—
Shares surrendered as payment of tax withholding	(271)	(353)	—
Net cash provided by (used in) financing activities	<u>600,434</u>	<u>161,247</u>	<u>(60,831)</u>
Effects of exchange rate changes on cash and cash equivalents	1	—	—
Increase (decrease) in cash	5,681	(27,763)	5,916
Cash - beginning of year	13,334	41,097	35,181
Cash - end of year	<u>\$ 19,015</u>	<u>\$ 13,334</u>	<u>\$ 41,097</u>
Interest paid	<u>\$ 34,977</u>	<u>\$ 17,509</u>	<u>\$ 24,820</u>
Income taxes paid	<u>\$ 12,865</u>	<u>\$ 11,894</u>	<u>\$ 15,494</u>

See accompanying notes.

Prestige Brands Holdings, Inc.
Notes to Consolidated Financial Statements

1. Business and Basis of Presentation

Nature of Business

Prestige Brands Holdings, Inc. (referred to herein as the “Company” or “we” which reference shall, unless the context requires otherwise, be deemed to refer to Prestige Brands Holdings, Inc. and all of its direct or indirect wholly-owned subsidiaries on a consolidated basis) is engaged in the marketing, sales and distribution of Over-the-Counter (“OTC”) Healthcare and Household Cleaning brands to mass merchandisers, drug stores, supermarkets, club and dollar stores primarily in the United States, Canada and certain other international markets. Prestige Brands Holdings, Inc. is a holding company with no operations and is also the parent guarantor of the senior credit facility and the senior notes described in Note 10 to the Consolidated Financial Statements.

Basis of Presentation

Our Consolidated Financial Statements are prepared in accordance with accounting principles generally accepted in the United States. All significant intercompany transactions and balances have been eliminated in consolidation. Our fiscal year ends on March 31st of each year. References in these Consolidated Financial Statements or notes to a year (e.g., “2012”) mean our fiscal year ended on March 31st of that year.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (“GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses during the reporting period. Although these estimates are based on our knowledge of current events and actions that we may undertake in the future, actual results could differ from those estimates. As discussed below, our most significant estimates include those made in connection with the valuation of intangible assets, sales returns and allowances, trade promotional allowances and inventory obsolescence.

Cash and Cash Equivalents

We consider all short-term deposits and investments with original maturities of three months or less to be cash equivalents. Substantially all of our cash is held by a large regional bank with headquarters in California. We do not believe that, as a result of this concentration, we are subject to any unusual financial risk beyond the normal risk associated with commercial banking relationships.

Accounts Receivable

We extend non-interest-bearing trade credit to our customers in the ordinary course of business. We maintain an allowance for doubtful accounts receivable based upon historical collection experience and expected collectability of the accounts receivable. In an effort to reduce credit risk, we (i) have established credit limits for all of our customer relationships, (ii) perform ongoing credit evaluations of customers’ financial condition, (iii) monitor the payment history and aging of customers’ receivables, and (iv) monitor open orders against an individual customer’s outstanding receivable balance. As a result of our acquisition of GSK brands and our Transitional Services Agreement, we have also included in accounts receivable \$8.4 million due from GSK, as further discussed in Note 3.

Inventories

Inventories are stated at the lower of cost or market value, where cost is determined by using the first-in, first-out method. We reduce inventories for the diminution of value resulting from product obsolescence, damage or other issues affecting marketability, equal to the difference between the cost of the inventory and its estimated market value. Factors utilized in the determination of estimated market value include (i) current sales data and historical return rates, (ii) estimates of future demand, (iii) competitive pricing pressures, (iv) new product introductions, (v) product expiration dates, and (vi) component and packaging obsolescence.

Property and Equipment

Property and equipment are stated at cost and are depreciated using the straight-line method based on the following estimated useful lives:

	Years
Machinery	5
Computer equipment	3
Furniture and fixtures	7

Leasehold improvements are amortized over the lesser of the term of the lease or five years.

Expenditures for maintenance and repairs are charged to expense as incurred. When an asset is sold or otherwise disposed of, we remove the cost and associated accumulated depreciation from the accounts and recognize the resulting gain or loss in the Consolidated Statement of Operations.

Property and equipment are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. An impairment loss is recognized if the carrying amount of the asset exceeds its fair value.

Goodwill

The excess of the purchase price over the fair market value of assets acquired and liabilities assumed in purchase business combinations is classified as goodwill. Goodwill is not amortized, although the carrying value is tested for impairment at least annually in the fourth fiscal quarter of each year, or more frequently if events or changes in circumstances indicate that the asset may be impaired. We test goodwill for impairment at the reporting unit "brand" level, which is one level below the operating segment level.

Intangible Assets

Intangible assets, which are comprised primarily of trademarks, are stated at cost less accumulated amortization. For intangible assets with finite lives, amortization is computed on the straight-line method over estimated useful lives ranging from 3 to 30 years.

Indefinite-lived intangible assets are tested for impairment at least annually in the fourth fiscal quarter of each year. Intangible assets with finite lives are reviewed for impairment whenever events or changes in circumstances indicate that their carrying amounts exceed their fair values and may not be recoverable. An impairment loss is recognized if the carrying amount of the asset exceeds its fair value.

Deferred Financing Costs

We have incurred debt origination costs in connection with the issuance of long-term debt. These costs are capitalized as deferred financing costs and amortized over the term of the related debt using the effective interest method, or in certain circumstances, the straight-line method, where the straight-line method approximates the effective interest method.

Revenue Recognition

Revenues are recognized when the following criteria are met: (i) persuasive evidence of an arrangement exists; (ii) the selling price is fixed or determinable; (iii) the product has been shipped and the customer takes ownership and assumes the risk of loss; and (iv) collection of the resulting receivable is reasonably assured. We have determined that these criteria are met and the transfer of the risk of loss generally occurs when product is received by the customer and, accordingly, we recognize revenue at that time. Provision is made for estimated discounts related to customer payment terms and estimated product returns at the time of sale based on our historical experience.

As is customary in the consumer products industry, we participate in the promotional programs of our customers to enhance the sale of our products. The cost of these promotional programs varies based on the actual number of units sold during a finite period of time. These promotional programs consist of direct-to-consumer incentives, such as coupons and temporary price reductions, as well as incentives to our customers, such as allowances for new distribution, including slotting fees, and cooperative advertising. Estimates of the costs of these promotional programs are based on (i) historical sales experience, (ii) the current promotional offering, (iii) forecasted data, (iv) current market conditions, and (v) communication with customer purchasing/marketing personnel. At the completion of the promotional program, the estimated amounts are adjusted to actual results.

Due to the nature of the consumer products industry, we are required to estimate future product returns. Accordingly, we record an estimate of product returns concurrent with recording sales which is made after analyzing (i) historical return rates, (ii) current economic trends, (iii) changes in customer demand, (iv) product acceptance, (v) seasonality of our product offerings, and (vi) the impact of changes in product formulation, packaging and advertising.

Cost of Sales

Cost of sales includes product costs, warehousing costs, inbound and outbound shipping costs, and handling and storage costs. Shipping, warehousing and handling costs were \$27.8 million for 2012, \$23.5 million for 2011 and \$20.7 million for 2010.

Advertising and Promotion Costs

Advertising and promotion costs are expensed as incurred. Allowances for new distribution costs associated with products, including slotting fees, are recognized as a reduction of sales. Under these new distribution arrangements, the retailers allow our products to be placed on the stores' shelves in exchange for such fees.

Stock-based Compensation

We recognize stock-based compensation by measuring the cost of services to be rendered based on the grant-date fair value of the equity award. Compensation expense is to be recognized over the period an employee is required to provide service in exchange for the award, generally referred to as the requisite service period.

Income Taxes

Deferred tax assets and liabilities are determined based on the differences between the financial reporting and tax bases of assets and liabilities using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is established when necessary to reduce deferred tax assets to the amounts expected to be realized.

The Income Taxes topic of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") prescribes a recognition threshold and measurement attributes for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. As a result, we have applied a more-likely-than-not recognition threshold for all tax uncertainties. The guidance only allows the recognition of those tax benefits that have a greater than 50% likelihood of being sustained upon examination by the various taxing authorities.

We are subject to taxation in the United States and various state and foreign jurisdictions.

We classify penalties and interest related to unrecognized tax benefits as income tax expense in the Consolidated Statements of Operations.

Derivative Instruments

Companies are required to recognize derivative instruments as either assets or liabilities in the Consolidated Balance Sheets at fair value. The accounting for changes in the fair value of a derivative instrument depends on whether it has been designated and qualifies as part of a hedging relationship and, further, on the type of hedging relationship. For those derivative instruments that are designated and qualify as hedging instruments, a company must designate the hedging instrument, based upon the exposure being hedged, as a fair value hedge, a cash flow hedge or a hedge of a net investment in a foreign operation.

While we have utilized derivative financial instruments in the past, we did not have any derivative financial instruments at March 31, 2012 or 2011, although we did incur a \$1.3 million loss during 2010 related to derivative financial instruments.

Earnings Per Share

Basic earnings per share is calculated based on income available to common stockholders and the weighted-average number of shares outstanding during the reporting period. Diluted earnings per share is calculated based on income available to common stockholders and the weighted-average number of common and potential common shares outstanding during the reporting period. Potential common shares, composed of the incremental common shares issuable upon the exercise of stock options, stock appreciation rights and unvested restricted shares, are included in the earnings per share calculation to the extent that they are dilutive.

Recently Issued Accounting Standards

In December 2011, the FASB issued guidance regarding disclosures about offsetting assets and liabilities. The new disclosure requirements mandate that entities disclose both gross and net information about instruments and transactions eligible for offset in the statement of financial position as well as instruments and transactions subject to an agreement similar to a master netting arrangement. In addition, the standard requires disclosure of collateral received and posted in connection with master netting agreements or similar arrangements. An entity will be required to disclose the following information for assets and liabilities within the scope of the new standard: (i) the gross amounts of those recognized assets and those recognized liabilities; (ii) the amounts offset to determine the net amounts presented in the statement of financial position; (iii) the net amounts presented in the statement of financial position; (iv) the amounts subject to an enforceable master netting arrangement or similar agreement not otherwise included in (ii); and (v) the net amount after deducting the amounts in (iv) from the amounts in (iii). The standard affects all entities with balances presented on a net basis in the financial statements, derivative assets and derivative liabilities, repurchase agreements, and financial assets and financial liabilities executed under a master netting or similar arrangement. This guidance is effective for annual reporting periods beginning on or after January 1, 2013, and interim periods within those annual periods. We do not expect the adoption of this new guidance to have a material impact on our Consolidated Financial Statements. However, our arrangement with GSK provides, during the term of the arrangement, that we will receive a net monthly remittance and therefore we will be

reporting a net amount due from GSK in our accounts receivable.

In June 2011, the FASB issued guidance regarding presentation of comprehensive income. Under the ASC Comprehensive Income topic, entities are allowed the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In both choices, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income, and a total amount for comprehensive income. This guidance eliminates the option to present the components of other comprehensive income as part of the statement of changes in stockholders' equity. This guidance does not change the items that must be reported in other comprehensive income or when an item of other comprehensive income must be reclassified to net income.

In December 2011, the FASB issued guidance to defer the new requirement to present components of reclassifications of other comprehensive income on the face of the income statement. Based on this guidance, entities are still required to adopt either the single continuous statement or the two-statement approach required by the new guidance. However, entities should continue to report reclassifications out of accumulated other comprehensive income consistent with the requirements in effect before the adoption of the new standard (i.e., by component of other comprehensive income, either by displaying each component on a gross basis on the face of the appropriate financial statement or by displaying each component net of other changes on the face of the appropriate financial statement with the gross change disclosed in the notes). The new guidance and this deferral are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. Early adoption is permitted, but full retrospective application is required. The December 2011 deferral of the guidance issued in June 2011, as well as the June 2011 guidance, are effective at the same time. We do not expect that the adoption of this new guidance will have a material impact on our Consolidated Financial Statements.

In September 2011, the FASB issued guidance regarding testing goodwill for impairment. The new guidance is intended to simplify how entities test goodwill for impairment. The new guidance permits an entity to first assess qualitative factors to determine whether it is "more-likely-than-not" that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test described in the ASC Intangibles-Goodwill and Other topic. The more-likely-than-not threshold is defined as having a likelihood of more than 50%. The new guidance is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. Early adoption is permitted. We do not expect that the adoption of this new guidance will have a material impact on our Consolidated Financial Statements.

In May 2011, the FASB issued guidance on fair value measurement. The ASC Fair Value Measurement topic amended the requirements for measuring fair value and for disclosing information about fair value measurements, including a consistent meaning of the term "fair value". The new guidance states that the concepts of highest and best use and valuation premise are only relevant when measuring the fair value of non-financial assets (that is, it does not apply to financial assets or any liabilities). The disclosure requirements have been enhanced, with the most significant change requiring entities, for their recurring Level 3 fair value measurements, to disclose quantitative information about unobservable inputs used, a description of the valuation processes used by the entity, and a qualitative discussion about the sensitivity of the measurements. New disclosures are required about the use of a non-financial asset measured or disclosed at fair value if its use differs from its highest and best use. In addition, entities must report the level in the fair value hierarchy of assets and liabilities not recorded at fair value but where fair value is disclosed. This guidance is effective during interim and annual periods beginning after December 15, 2011 and is required to be applied prospectively. The adoption of this new guidance did not have a material impact on our Consolidated Financial Statements.

Management has reviewed and continues to monitor the actions of the various financial and regulatory reporting agencies and is currently not aware of any other pronouncement that could have a material impact on our consolidated financial position, results of operations or cash flows.

2. Discontinued Operations and Sale of Certain Assets

On September 1, 2010, we sold certain assets related to the *Cutex* nail polish remover brand for \$4.1 million. In accordance with the Discontinued Operations topic of the ASC, we reclassified the related operating results as discontinued in the Consolidated Financial Statements and related notes for all periods presented. We recognized a loss of \$0.9 million on a pre-tax basis and \$0.6 million net of related tax effects of \$0.3 million, on the sale in 2011. As a result of the divestiture of *Cutex*, which comprised a substantial majority of the assets in our previously reported Personal Care segment, we reclassified the then remaining Personal Care segment assets to the OTC Healthcare segment for all periods presented.

In October 2009, we sold certain assets related to the shampoo brands, which were included in our previously reported Personal Care segment. In accordance with the ASC, we reclassified the related operating results as discontinued in the Consolidated

Financial Statements and related notes for all periods presented. We recognized a gain of \$0.3 million on a pre-tax basis and \$0.2 million net of related tax effects of \$0.1 million on the sale in 2010. The total sales price for the assets was \$9.0 million, subject to an inventory adjustment, with \$8.0 million received upon closing. We received the remaining \$1.0 million in October 2010.

The following table summarizes the results of discontinued operations:

(In thousands)

Components of Income	Year Ended March 31,		
	2012	2011	2010
Revenues	\$ —	\$ 4,027	\$ 14,474
Income (loss) from discontinued operations, net of income tax	—	591	(112)

3. Acquisitions

Acquisition of GlaxoSmithKline OTC Brands

On December 20, 2011, we entered into two separate agreements with GlaxoSmithKline plc (“GSK”) to acquire a total of 17 North American OTC pharmaceutical brands for \$660.0 million in cash. On January 31, 2012, we completed, subject to a post-closing inventory and apportionment adjustment, as defined in the agreement, the acquisition of 15 North American over-the-counter healthcare brands owned by GSK and its affiliates (the “GSK Brands I”) for \$615.0 million in cash, including the related contracts, trademarks and inventory.

The GSK Brands I include, among other brands, *BC*, *Goody's* and *Ecotrin* brands of pain relievers; *Beano*, *Gaviscon*, *Phazyme*, *Tagamet* and *Fiber Choice* gastrointestinal brands; and the *Sominex* sleep aid brand. These brands are complementary to our existing OTC Healthcare portfolio.

We acquired the GSK Brands I pursuant to the terms of that certain purchase agreement we entered into on December 20, 2011 with GSK and its affiliates. We also entered into a separate purchase agreement on December 20, 2011 with GSK and its affiliates to acquire *Debrox* and *Gly-Oxide* brands (the “GSK Brands II”) in the United States for \$45.0 million in cash, including the related contracts, trademarks and inventory, subject to a post-closing inventory adjustment. The GSK Brands II are also complementary to our existing OTC Healthcare portfolio. The acquisition of the GSK Brands II was completed on March 30, 2012.

These acquisitions were accounted for in accordance with the Business Combinations topic of the ASC, which requires that the total cost of an acquisition be allocated to the tangible and intangible assets acquired and liabilities assumed based upon their respective fair values at the date of acquisition.

The purchase price of GSK Brands I and GSK Brands II was funded by cash provided by the issuance of long-term debt and additional bank borrowings, which are discussed further in Note 10 to the Consolidated Financial Statements.

In April 2012, we received the post-closing inventory and apportionment adjustments, which required an additional \$2.8 million to be paid to GSK.

Concurrent with the closing of the transaction, we entered into a Transitional Services Agreement with GSK (the “TSA”), whereby GSK is to provide various services including: marketing, operations, finance and other services from the acquisition date through June 30, 2012. As part of the TSA, GSK will, among other things, ship products, invoice customers, collect from customers and pay certain vendors on our behalf. Our costs under the TSA are approximately \$2.5 million per month for the length of the agreement and may be reduced if we remove certain services as we transition these processes to us. We incurred \$5.0 million in TSA costs for the period ended March 31, 2012. Pursuant to this arrangement, we will receive on a monthly basis the net amount owed to us for revenues and expenses, net of GSK's TSA fees and inventory that GSK purchased on our behalf. Therefore, a net amount of \$8.4 million due from GSK is included in our accounts receivable at March 31, 2012.

The allocation of the purchase price to assets acquired is based on a valuation which we performed to determine the fair value of such assets as of the acquisition date. The following table summarizes our preliminary allocation of the \$662.8 million purchase price to the assets we acquired on the GSK Brands I and GSK Brands II (collectively, the “GSK Brands”) acquisition dates:

<i>(In thousands)</i>	GSK Brands I (January 31, 2012)	GSK Brands II (March 30, 2012)	Total
Inventory	\$ 14,820	\$ 250	\$ 15,070
Prepaid expenses	3,575	—	3,575
Trade names	542,892	81,257	624,149
Goodwill	17,401	2,605	20,006
Total purchase price	<u>\$ 578,688</u>	<u>\$ 84,112</u>	<u>\$ 662,800</u>

We recorded goodwill based on the amount by which the purchase price exceeded the fair value of assets acquired. The amount of goodwill deductible for tax purposes is \$20.0 million.

The fair value of the trade names is comprised of \$556.9 million of non-amortizable intangible assets and \$67.2 million of amortizable intangible assets. We are amortizing the purchased amortizable intangible assets on a straight-line basis over an estimated weighted average useful life of 19.3 years. The weighted average remaining life for amortizable intangible assets at March 31, 2012 was 19.1 years.

The operating results of GSK Brands I have been included in our Consolidated Financial Statements from February 1, 2012, the day following the date of acquisition. Revenues of the acquired operations from February 1, 2012 through March 31, 2012 were \$30.4 million and the net loss was \$2.8 million. The operating results of GSK Brands II will be included in our Consolidated Financial Statements beginning April 1, 2012. Accordingly, we did not record any revenues or operating results in the accompanying Consolidated Financial Statements related to GSK Brands II.

Blacksmith Acquisition

On November 1, 2010, we acquired 100% of the capital stock of Blacksmith Brands Holdings, Inc. ("Blacksmith") for \$190.0 million in cash, plus a working capital adjustment of \$13.4 million, and we paid an additional \$1.1 million on behalf of Blacksmith for the seller's transaction costs. As previously disclosed, we brought to arbitration a matter regarding the working capital adjustment related to Blacksmith. On July 20, 2011, we received notification from the arbitrator that we would be awarded a working capital adjustment pending final resolution and distribution from the escrow agent. In September 2011, we received \$1.2 million in settlement of this matter, which reduced the amount of recorded goodwill related to Blacksmith.

As a result of this acquisition, we acquired five leading consumer OTC brands: *Efferdent*, *Effergrip*, *PediaCare*, *Luden's*, and *NasalCrom*. The purchase price was funded by cash provided by the issuance of long-term debt and additional bank borrowings, which are discussed further in Note 10 to the Consolidated Financial Statements.

The acquisition was accounted for in accordance with the Business Combinations topic of the ASC, which requires that the total cost of an acquisition be allocated to the tangible and intangible assets acquired and liabilities assumed based upon their respective fair values at the date of acquisition.

The allocation of the purchase price to assets acquired and liabilities assumed is based on a valuation which we performed to determine the fair value of such assets as of the acquisition date. The following table summarizes our final allocation of the \$203.4 million purchase price to the assets we acquired and liabilities assumed on the Blacksmith acquisition date:

<i>(In thousands)</i>	November 1, 2010	
Cash acquired	\$	2,507
Accounts receivable, net		17,473
Other receivables		1,198
Income taxes receivable		5
Inventories		22,155
Prepays and other current assets		44
Property, plant and equipment, net		226
Goodwill		42,207
Trademarks		165,346
Other long-term assets		19
Total assets acquired		251,180
Accounts payable		7,060
Accrued expenses		5,212
Income taxes payable		2,031
Deferred income taxes		33,526
Total liabilities assumed		47,829
Total purchase price	\$	203,351

We recorded goodwill based on the amount by which the purchase price exceeded the fair value of assets acquired and liabilities assumed. The amount of goodwill deductible for tax purposes is \$4.6 million.

The fair value of the trademarks is comprised of \$158.0 million of non-amortizable intangible assets and \$7.3 million of amortizable intangible assets. We are amortizing the purchased amortizable intangible assets on a straight-line basis over an estimated weighted average useful life of 15 years. The weighted average remaining life for amortizable intangible assets at March 31, 2012 was 13.6 years.

The operating results of Blacksmith have been included in our Consolidated Financial Statements from November 1, 2010, the date of acquisition. Revenues of the acquired operations from November 1, 2010 through March 31, 2011 were \$34.8 million and the net loss was \$4.8 million.

The following table provides our combined unaudited pro forma revenues, income from continuing operations and income from continuing operations per basic and diluted common share as if the results of Blacksmith and the GSK Brands occurred on April 1, 2010. The pro forma results were prepared from financial information obtained from the sellers of the businesses, as well as information obtained during the due diligence processes associated with the acquisitions. The unaudited pro forma results reflect certain adjustments related to the acquisitions, such as increased depreciation and amortization expense resulting from the stepped-up basis to fair value of the assets acquired and adjustments to reflect the Company's borrowing and tax rates. This pro forma information is not necessarily indicative of either the combined results of operations that actually would have been realized by us had the acquisition of the Blacksmith and GSK brands been consummated at the beginning of the period for which the pro forma information is presented, or of future results.

<i>(In thousands, except per share data)</i>	Year Ended March 31,	
	2012	2011
	<i>(Unaudited)</i>	
Revenues	\$ 616,849	\$ 599,543
Income from continuing operations	69,989	34,913
Basic earnings per share:		
Income from continuing operations	\$ 1.39	\$ 0.70
Diluted earnings per share:		
Income from continuing operations	\$ 1.38	\$ 0.69

Dramamine Acquisition

On January 6, 2011, we acquired certain assets comprising the *Dramamine* brand in the United States. The purchase price was \$77.1 million in cash, after a \$0.1 million post-closing inventory adjustment and including transaction costs of \$1.2 million incurred in the acquisition. The purchase price was funded by cash on hand.

In accounting for the acquisition of the *Dramamine* brand, we considered the Business Combinations topic of the ASC. Accordingly, as the *Dramamine* assets acquired do not constitute a business, as defined in the ASC, we have accounted for the transaction as an asset acquisition. The total consideration paid, including transaction costs, has been allocated to the tangible and intangible assets acquired based upon their relative fair values at the date of acquisition.

The allocation of the purchase price to assets acquired and liabilities assumed is based on valuations which we performed to determine the fair value of such assets as of the acquisition date. The following table summarizes our allocation of the \$77.1 million purchase price to the assets we acquired comprising the *Dramamine* brand:

<i>(In thousands)</i>	January 6, 2011	
Inventories	\$	1,249
Trademark		75,866
Total purchase price	\$	77,115

The \$75.9 million fair value of the acquired *Dramamine* trademark was comprised solely of non-amortizable intangible assets.

4. Accounts Receivable

Accounts receivable consist of the following:

<i>(In thousands)</i>	March 31,	
	2012	2011
Components of Accounts Receivable		
Trade accounts receivable	\$ 55,721	\$ 50,333
Other receivables	9,368	712
	65,089	51,045
Less allowances for discounts, returns and uncollectible accounts	(4,861)	(6,652)
Accounts receivable, net	\$ 60,228	\$ 44,393

As a result of our acquisition of the GSK brands and the related TSA, we will be receiving a net remittance from GSK for the revenues, expenses and inventory purchases that GSK has transacted on our behalf, net of the TSA fees that we would owe GSK. Accordingly, we have included in accounts receivable \$8.4 million due from GSK as part of the TSA.

5. Inventories

Inventories consist of the following:

<i>(In thousands)</i>	March 31,	
	2012	2011
Components of Inventories		
Packaging and raw materials	\$ 1,189	\$ 1,287
Finished goods	49,924	38,464
Inventories	\$ 51,113	\$ 39,751

Inventories are carried and depicted above at the lower of cost or market, which includes a reduction in inventory values of \$1.6 million and \$0.6 million at March 31, 2012 and 2011, respectively, related to obsolete and slow-moving inventory.

6. Property and Equipment

Property and equipment consist of the following:

<i>(In thousands)</i>	March 31,	
	2012	2011
Components of Property and Equipment		
Machinery	\$ 1,454	\$ 1,215
Computer equipment	2,693	2,341
Furniture and fixtures	241	239
Leasehold improvements	436	423
	4,824	4,218
Accumulated depreciation	(3,520)	(2,774)
Property and equipment, net	<u>\$ 1,304</u>	<u>\$ 1,444</u>

We recorded depreciation expense of \$0.7 million, \$0.7 million, and \$0.6 million for 2012, 2011 and 2010, respectively.

7. Goodwill

The following table summarizes the changes in the carrying value of goodwill by operating segment for each of 2010, 2011 and 2012:

<i>(In thousands)</i>	OTC Healthcare	Household Cleaning	Consolidated
Balance – March 31, 2009			
Goodwill	\$ 234,270	\$72,549	\$306,819
Accumulated impairment losses	(127,419)	(65,160)	(192,579)
Balance – March 31, 2009	<u>106,851</u>	<u>7,389</u>	<u>114,240</u>
2010 impairments			
	(2,751)	—	(2,751)
Balance – March 31, 2010			
Goodwill	234,270	72,549	306,819
Accumulated impairment losses	(130,170)	(65,160)	(195,330)
Balance – March 31, 2010	<u>104,100</u>	<u>7,389</u>	<u>111,489</u>
2011 additions			
	43,407	—	43,407
Balance – March 31, 2011			
Goodwill	277,677	72,549	350,226
Accumulated impairment losses	(130,170)	(65,160)	(195,330)
	<u>147,507</u>	<u>7,389</u>	<u>154,896</u>
2012 additions			
	20,006	—	20,006
Balance – March 31, 2012			
Goodwill	297,683	72,549	370,232
Blacksmith escrow settlement*	(1,200)	—	(1,200)
Accumulated impairment losses	(130,170)	(65,160)	(195,330)
	<u>\$ 166,313</u>	<u>\$ 7,389</u>	<u>\$ 173,702</u>

* As previously disclosed, we brought to arbitration a matter regarding the working capital adjustment related to Blacksmith. On July 20, 2011, we received notification from the arbitrator that we would be awarded a working capital adjustment pending final

resolution and distribution from the escrow agent. In September 2011, we received \$1.2 million in settlement of this matter, which reduced the amount of recorded goodwill related to Blacksmith.

On November 1, 2010, we acquired 100% of the capital stock of Blacksmith. In connection with this acquisition, we recorded goodwill of \$42.2 million, net of the \$1.2 million settlement noted above, based on the amount by which the purchase price exceeded the fair value of net assets acquired.

As discussed in Note 3, on January 31, 2012, we completed the acquisition of GSK Brands I for \$615.0 million in cash, and on March 30, 2012, we completed the acquisition of GSK Brands II for \$45.0 million in cash, subject to certain post-closing adjustments. We recorded a post-closing adjustment as of March 31, 2012, to reflect adjustments to certain inventory items and other current assets acquired. In connection with these acquisitions, we recorded goodwill of \$20.0 million based on the amount by which the purchase price exceeded the fair value of assets acquired.

At March 31, 2012 and March 31, 2011, in conjunction with the annual test for goodwill impairment, there were no indicators of impairment under the analysis. Accordingly, no impairment charge was recorded in 2012 or in 2011.

At March 31, 2010, in conjunction with the annual test for goodwill, we recorded an impairment charge of \$2.8 million to adjust the carrying amounts of goodwill related to the *Cutex* brand to its fair value, as determined by use of a discounted cash flow methodology. The impairment was a result of distribution losses and increased competition from private label store brands. Due to the sale of *Cutex* on September 1, 2010, this impairment charge is included in the loss from discontinued operations for the year ended March 31, 2010.

The discounted cash flow methodology is a widely-accepted valuation technique utilized by market participants in the transaction evaluation process and has been applied consistently. We also considered our market capitalization at March 31, 2012, 2011 and 2010, as compared to the aggregate fair values of our reporting units to assess the reasonableness of our estimates pursuant to the discounted cash flow methodology. Although the impairment charges in the prior years were a result of utilizing management's best estimate of fair value, the estimates and assumptions made in assessing the fair value of the our reporting units and the valuation of the underlying assets and liabilities are inherently subject to significant uncertainties. Consequently, changing rates of interest and inflation, declining sales or margins, increases in competition, changing consumer preferences, technical advances or reductions in advertising and promotion may require additional impairments in the future.

As discussed in Note 1, in accordance with recent guidance from the FASB, an entity is permitted to first assess qualitative factors in testing goodwill for impairment prior to performing a quantitative assessment. The new guidance is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. This new guidance will be effective for the Company in fiscal year 2013.

8. Intangible Assets

A reconciliation of the activity affecting intangible assets for each of 2010, 2011 and 2012 is as follows:

(In thousands)

	Year Ended March 31, 2010			
	Indefinite Lived Trademarks	Finite Lived Trademarks	Non Compete Agreement	Totals
Gross Amount				
Balance – March 31, 2009	\$ 500,176	\$ 106,159	\$ 158	\$ 606,493
Reclassifications	(45,605)	45,605	—	—
Disposals	—	(500)	—	(500)
Balance – March 31, 2010 (including discontinued operations)	454,571	151,264	158	605,993
Long-term assets of discontinued operations	—	(8,270)	—	(8,270)
Balance - March 31, 2010	\$ 454,571	\$ 142,994	\$ 158	\$ 597,723
Accumulated Amortization				
Balance – March 31, 2009	\$ —	\$ 37,214	\$ 142	\$ 37,356
Additions	—	9,725	16	9,741
Disposals	—	(333)	—	(333)
Balance – March 31, 2010 (including discontinued operations)	—	46,606	158	46,764
Long-term assets of discontinued operations	—	(3,400)	—	(3,400)
Balance - March 31, 2010	\$ —	\$ 43,206	\$ 158	\$ 43,364
Intangibles, net – March 31, 2010	\$ 454,571	\$ 99,788	\$ —	\$ 554,359

(In thousands)

	Year Ended March 31, 2011			
	Indefinite Lived Trademarks	Finite Lived Trademarks	Non Compete Agreement	Totals
Gross Amount				
Balance – March 31, 2010 (including discontinued operations)	\$ 454,571	\$ 151,264	\$ 158	\$ 605,993
Additions	233,913	7,299	—	241,212
Disposals	—	(8,270)	—	(8,270)
Balance – March 31, 2011	\$ 688,484	\$ 150,293	\$ 158	\$ 838,935
Accumulated Amortization				
Balance – March 31, 2010	\$ —	\$ 46,606	\$ 158	\$ 46,764
Additions	—	9,210	—	9,210
Disposals	—	(3,400)	—	(3,400)
Balance – March 31, 2011	\$ —	\$ 52,416	\$ 158	\$ 52,574
Intangibles, net – March 31, 2011	\$ 688,484	\$ 97,877	\$ —	\$ 786,361

(In thousands)

	Year Ended March 31, 2012			
	Indefinite Lived Trademarks	Finite Lived Trademarks	Non Compete Agreement	Totals
Gross Amount				
Balance – March 31, 2011	\$ 688,484	\$ 150,293	\$ 158	\$ 838,935
Additions	556,930	67,219	—	624,149
Disposals	—	—	—	—
Balance – March 31, 2012	\$ 1,245,414	\$ 217,512	\$ 158	\$ 1,463,084
Accumulated Amortization				
Balance – March 31, 2011	\$ —	\$ 52,416	\$ 158	\$ 52,574
Additions	—	9,988	—	9,988
Disposals	—	—	—	—
Balance – March 31, 2012	\$ —	\$ 62,404	\$ 158	\$ 62,562
Intangibles, net – March 31, 2012	\$ 1,245,414	\$ 155,108	—	\$ 1,400,522

As discussed in Note 3, on January 31, 2012, we completed the acquisition of GSK Brands I for \$615.0 million in cash. On March 30, 2012, we completed the acquisition of GSK Brands II for \$45.0 million in cash. In connection with these acquisitions, we allocated \$624.1 million of the purchase price to intangible assets.

On January 6, 2011, we acquired certain assets related to the *Dramamine* brand in the United States. In connection with this acquisition, we allocated \$75.9 million of the purchase price to intangible assets.

On November 1, 2010, we acquired 100% of the capital stock of Blacksmith. In connection with this acquisition, we allocated \$165.3 million of the purchase price to intangible assets, which are comprised of acquired trademarks. The allocation is based on valuations performed to determine the fair value of such assets as of the acquisition date.

We completed our test for impairment of its intangible assets during the fourth quarter of 2012, 2011 and 2010. For 2012, 2011 and 2010, we did not record any impairment charge as facts and circumstances indicated that the fair values of the intangible assets for such segments exceeded their carrying values. For 2009, we recorded an impairment charge aggregating \$58.6 million to the OTC Healthcare and Household Cleaning segments as facts and circumstances indicated that the carrying values of the intangible assets for such segments exceeded their fair values and may not be recoverable.

The economic events experienced during 2009, as well as our plans and projections for our brands indicated that several of such brands could no longer support indefinite useful lives. Each of the brands that incurred an impairment charge during the three month period ended March 31, 2009 was adversely affected by increased competition and the macroeconomic environment in the United States. Consequently, at April 1, 2009, management reclassified \$45.6 million of previously indefinite-lived intangibles to intangibles with definite lives. Management estimates the remaining useful lives of these intangibles to be 20 years.

The carrying value as of March 31, 2009 and the annual amortization charges by operating segment of the reclassified intangibles were as follows (in thousands):

Intangible	Carrying Value as of March 31, 2009		Annual Amortization	
Household Cleaning Trademarks	\$	34,888	\$	1,745
OTC Healthcare Trademarks		10,717		536
	\$	45,605	\$	2,281

The weighted average remaining life for finite-lived intangible assets at March 31, 2012 was approximately 16.3 years and the amortization expense for the year ended March 31, 2012 was \$10.0 million. At March 31, 2012, finite-lived intangible assets are expected to be amortized over their estimated useful life, which ranges from a period of 3 to 30 years and the estimated amortization

expense for each of the five succeeding years and periods thereafter is as follows (in thousands):

Year Ending March 31,		
2013	\$	12,029
2014		10,898
2015		9,563
2016		9,563
2017		9,563
Thereafter		103,493
	\$	<u>155,109</u>

9. Other Accrued Liabilities

Other accrued liabilities consist of the following:

(In thousands)	March 31,	
	2012	2011
Accrued marketing costs	\$ 10,554	\$ 9,967
Accrued payroll	7,181	7,589
Accrued commissions	415	408
Accrued income taxes	577	531
Accrued professional fees	3,821	1,953
Accrued severance	461	1,324
Accrued other	299	508
	\$ 23,308	\$ 22,280

10. Long-Term Debt

On March 24, 2010, Prestige Brands, Inc. issued \$150.0 million of 2010 Senior Notes, with an interest rate of 8.25% and a maturity date of April 1, 2018. On November 1, 2010, Prestige Brands, Inc. issued an additional \$100.0 million of the 2010 Senior Notes. The Company may earlier redeem some or all of the 2010 Senior Notes at redemption prices set forth in the indenture governing the 2010 Senior Notes (the "Senior Notes Indenture"). The 2010 Senior Notes are unconditionally guaranteed by Prestige Brands Holdings, Inc. and its domestic 100% owned subsidiaries other than Prestige Brands, Inc., the issuer. Each of these guarantees is joint and several. There are no significant restrictions on the ability of any of the guarantors to obtain funds from their subsidiaries. The 2010 Senior Notes issued in March and November were issued at an aggregate face value of \$150.0 million and \$100.0 million, respectively, with a discount to the initial purchasers of \$2.2 million and a premium of \$0.3 million, respectively, and net proceeds to the Company of \$147.8 million and \$100.3 million, respectively, yielding an 8.5% effective interest rate.

On March 24, 2010, Prestige Brands, Inc. entered into the 2010 Senior Term Loan for \$150.0 million, with an interest rate at LIBOR plus 3.25% with a LIBOR floor of 1.5% and a maturity date of March 24, 2016. The \$150.0 million 2010 Senior Term Loan was entered into with a discount to lenders of \$1.8 million and net proceeds to the Company of \$148.2 million, yielding a 5.0% effective interest rate. On November 1, 2010, we, together with the Borrower and certain of our other subsidiaries, executed an Increase Joinder to our Credit Agreement dated March 24, 2010 (the "Increase Joinder"), pursuant to which the Borrower entered into an incremental term loan in the amount of \$115.0 million. The incremental 2010 Senior Term Loan was scheduled to mature on March 24, 2016 and was repaid in full on January 31, 2012 with the entry into the new senior secured credit facilities described below. In connection with the refinancing and the payoff of the 2010 Senior Term Loan, we recognized a \$5.4 million loss on the extinguishment of debt for 2012. The 2010 Senior Term Loan was unconditionally guaranteed by Prestige Brands Holdings, Inc. and its domestic 100% owned subsidiaries, other than Prestige Brands, Inc. (the "Borrower").

Additionally, on March 24, 2010, Prestige Brands, Inc. entered into a non-amortizing senior secured revolving credit facility ("2010 Revolving Credit Facility" and, collectively with the 2010 Senior Term Loan, the "2010 Credit Agreement") in an aggregate principal amount of up to \$30.0 million. On November 1, 2010, pursuant to the Increase Joinder, the amount of the 2010 Revolving Credit Facility was increased by \$10.0 million and the Borrower had borrowing capacity under the 2010 Revolving Credit Facility in an aggregate principal amount of up to \$40.0 million. On January 31, 2012, in connection with the entry into new senior secured

credit facilities as described below, Prestige Brands terminated the 2010 Credit Agreement. There were no material early termination penalties as a result of the termination of the 2010 Credit Agreement.

On January 31, 2012, Prestige Brands, Inc. issued \$250.0 million of 2012 Senior Notes, with an interest rate of 8.125% and a maturity date of February 1, 2020. We may earlier redeem some or all of the 2012 Senior Notes at redemption prices set forth in the indenture governing the 2012 Senior Notes. The 2012 Senior Notes are guaranteed by Prestige Brands Holdings, Inc. and certain of its domestic 100% owned subsidiaries. Each of these guarantees is joint and several. There are no significant restrictions on the ability of any of the guarantors to obtain funds from their subsidiaries.

On January 31, 2012, Prestige Brands Inc. also entered into a New Senior Secured Credit Facility which consists of (i) a \$660.0 million term loan facility (“2012 Term Loan”) with a seven-year maturity and (ii) a \$50.0 million asset-based revolving credit facility (“2012 ABL Revolver”) with a five-year maturity. The 2012 Term Loan was issued with an original issue discount of 1.5% of the principal amount thereof, resulting in net proceeds to Prestige Brands of \$650.1 million.

The 2012 Term Loan is unconditionally guaranteed by Prestige Brands Holdings, Inc. and its domestic 100% owned subsidiaries, other than Prestige Brands, Inc. Each of these guarantees is joint and several. There are no significant restrictions on the ability of any of the guarantors to obtain funds from their subsidiaries.

The 2012 Term Loan bears interest at a rate per annum equal to an applicable margin plus, at our option, either (i) a base rate determined by reference to the highest of (a) the Federal Funds rate plus 0.50%, (b) the prime rate of Citibank, N.A., (c) the LIBOR rate determined by reference to the cost of funds for U.S. dollar deposits for an interest period of one month adjusted for certain additional costs, plus 1.00% and (d) a floor of 2.25% or (ii) a LIBOR rate determined by reference to the costs of funds for U.S. dollar deposits for the interest period relevant to such borrowing adjusted for certain additional costs provided that LIBOR shall not be lower than 1.25%. At March 31, 2012, the average interest rate on the 2012 Term Loan was 5.5%.

Borrowings under the 2012 ABL Revolver bear interest at a rate per annum equal to an applicable margin, plus, at our option, either (i) a base rate determined by reference to the highest of (a) the Federal Funds rate plus 0.50%, (b) the prime rate of Citibank, N.A., (c) the LIBOR rate determined by reference to the cost of funds for U.S. dollar deposits for an interest period of one month adjusted for certain additional costs, plus 1.00% or (ii) a LIBOR rate determined by reference to the costs of funds for U.S. dollar deposits for the interest period relevant to such borrowing adjusted for certain additional costs. The initial applicable margin for borrowings under the 2012 ABL Revolver is 1.75% with respect to LIBOR borrowings and 0.75% with respect to base-rate borrowings. The applicable margin for borrowings under the 2012 ABL Revolver may be increased to 2.00% or 2.25% for LIBOR borrowings and 1.00% or 1.25% for base-rate borrowings, depending on average excess availability under such revolving credit facility during the prior fiscal quarter. In addition to paying interest on outstanding principal under the 2012 ABL Revolver, we are required to pay a commitment fee to the lenders under the 2012 ABL Revolver in respect of the unutilized commitments thereunder. The initial commitment fee rate is 0.50% per annum. The commitment fee rate will be reduced to 0.375% per annum at any time when the average daily unused commitments for the prior quarter is less than a percentage of total commitments in an amount set forth in the credit agreement covering the 2012 ABL Revolver.

Under the 2012 Term Loan, we will be required to make quarterly payments each equal to 0.25% of the original principal amount of the term loan made on the closing date, with the balance expected to be due on the seventh anniversary of the closing date. However, since we made a \$25.0 million payment in March 2012, we will not be required to make a quarterly payment until the fourth quarter of 2016. For the 2012 ABL Revolver, in addition to paying interest on outstanding principal, we will be required to pay a commitment fee to the lenders in respect of the unutilized commitments thereunder, with an initial rate of 0.50% per annum, and which can be reduced at any time under certain conditions as defined in the agreement. We may voluntarily repay outstanding loans under the 2012 ABL Revolver at any time without a premium or penalty.

We used the net proceeds from the 2012 Senior Notes offering, together with borrowings under the 2012 Term Loan to finance the acquisition of 17 North American over-the-counter brands from GSK and its affiliates, to repay our existing senior secured credit facilities, to pay fees and expenses incurred in connection with these transactions and for general corporate purposes. The acquisition is discussed in Note 3 to the Consolidated Financial Statements.

In connection with the financing activities of March 2010 relating to the 2010 Senior Notes, the 2010 Senior Term Loan and the 2010 Revolving Credit Facility, we incurred \$7.3 million in issuance costs, of which \$6.6 million was capitalized as deferred financing costs and \$0.7 million was expensed. In connection with the financing activities of November 2010 relating to the 2010 Senior Notes, the 2010 Senior Term Loan and the 2010 Revolving Credit Facility, we incurred \$0.6 million in issuance costs, all of which was capitalized as deferred financing costs.

In connection with the financing activities of January 2012 relating to the 2012 Senior Notes, the 2012 Term Loan and the 2012 ABL Revolver, we incurred \$12.6 million, \$18.8 million and \$1.8 million, respectively, in issuance costs, which were capitalized as deferred financing costs. The deferred financing costs are being amortized over the terms of the related loan and notes.

On March 24, 2010, we retired our existing Senior Secured Term Loan facility with an original maturity date of April 6, 2011. In addition, on March 24, 2010, we repaid a portion and, on April 15, 2010, redeemed in full the remaining outstanding indebtedness under our previously outstanding Senior Subordinated Notes due in 2012, which bore interest at 9.25% with a maturity date of April 15, 2012. In connection with the refinancing, we recognized a \$0.3 million loss on the extinguishment of debt for 2011.

The 2010 Senior Notes and 2012 Senior Notes are senior unsecured obligations of the Company and are guaranteed on a senior unsecured basis. The 2010 Senior Notes are effectively junior in right of payment to all existing and future secured obligations of the Company with exception of the 2012 Senior Notes, equal in right of payment with all existing and future senior unsecured indebtedness of the Company, and senior in right of payment to all future subordinated debt of the Company. The 2012 Senior Notes are effectively subordinated to secured obligations of the Company including the New Senior Secured Credit Facilities and the 2010 Senior Notes, equal in right of payment to all existing and future unsecured obligations of the Company, and senior in right of payment to all existing and future obligations of the Company.

At any time prior to April 1, 2014, we may redeem the 2010 Senior Notes in whole or in part at a redemption price equal to 100% of the principal amount of the notes redeemed, plus a "make-whole premium" calculated as set forth in the Senior Notes Indenture, together with accrued and unpaid interest, if any, to the date of redemption. We may redeem the 2010 Senior Notes in whole or in part at any time on or after the 12-month period beginning April 1, 2014 at a redemption price of 104.125% of the principal amount thereof, at a redemption price of 102.063% of the principal amount thereof if the redemption occurs during the 12-month period beginning on April 1, 2015, and at a redemption price of 100% of the principal amount thereof if the redemption occurs on and after April 1, 2016, in each case, plus accrued and unpaid interest, if any, to the redemption date. In addition, prior to April 1, 2013, with the net cash proceeds from certain equity offerings, we may redeem up to 35% in aggregate principal amount of the 2010 Senior Notes at a redemption price of 108.250% of the principal amount of the 2010 Senior Notes to be redeemed, plus accrued and unpaid interest, if any, to the redemption date.

At any time prior to February 1, 2016, we may redeem the 2012 Senior Notes in whole or in part at a redemption price equal to 100% of the principal amount of the notes redeemed, plus a "make-whole premium" calculated as set forth in the Senior Notes Indenture, together with accrued and unpaid interest, if any, to the date of redemption. On or after February 1, 2016, we may redeem the 2012 Senior Notes in whole or in part at redemption prices set forth in the Indenture. In addition, at any time prior to February 1, 2015, we may redeem up to 35% of the aggregate principal amount of the 2012 Senior Notes at a redemption price equal to 108.125% of the principal amount plus accrued and unpaid interest to the redemption date, with the net cash proceeds of certain equity offerings, provided that certain conditions are met. Subject to certain limitations, in the event of a change of control, as defined in the Indenture, Prestige Brands, Inc. will be required to make an offer to purchase the 2012 Senior Notes at a price equal to 101% of the aggregate principal amount of the 2012 Senior Notes repurchased, plus accrued and unpaid interest, if any, to the date of repurchase.

The Senior Notes Indentures contain provisions that restrict us from undertaking specified corporate actions, such as asset dispositions, acquisitions, dividend payments, repurchases of common shares outstanding, changes of control, incurrences of indebtedness, issuance of equity, creation of liens, making of loans and transactions with affiliates. Additionally, the Credit Agreement and the Senior Notes Indenture contain cross-default provisions whereby a default pursuant to the terms and conditions of certain indebtedness will cause a default on the remaining indebtedness under the Credit Agreement and the Senior Notes Indenture. At March 31, 2012, we were in compliance with the covenants under our long-term indebtedness.

During the year ended March 31, 2012, we made voluntary principal payments against outstanding indebtedness of \$58.0 million in excess of required payments under the Credit Agreement governing the 2010 Senior Term Loan and \$25.0 million against the 2012 Term Loan. The 2010 Senior Term Loan was repaid in full on January 31, 2012.

Long-term debt consists of the following, as of the dates indicated:

(In thousands, except percentages)

	March 31,	
	2012	2011
2012 Senior Notes bear interest at 8.125%, with interest only payable on February 1 and August 1 of each year. The 2012 Senior Notes mature on February 1, 2020.	\$250,000	\$ —
2012 Term Loan bears interest at the Company's option at either a base rate plus applicable margin with a floor of 2.25% or LIBOR with a floor of 1.25%. Quarterly payments each equal to 0.25% of the original principal amount of the term loans are due, with the balance expected to be due on January 31, 2019.	635,000	—
2010 Senior Term Loan bore interest at the Company's option at either the prime rate plus a margin of 2.25% or LIBOR plus 3.25% with a LIBOR floor of 1.5%. The outstanding balance on the 2010 Senior Term Loan was repaid in full on January 31, 2012.	—	242,000
2010 Senior Notes bear interest at 8.25%, with interest only payable on April 1st and October 1st of each year. The 2010 Senior Notes mature on April 1, 2018.	250,000	250,000
	<u>1,135,000</u>	<u>492,000</u>
Current portion of long-term debt	—	—
	<u>1,135,000</u>	<u>492,000</u>
Less: unamortized discount	(11,092)	(5,055)
Long-term debt, net of unamortized discount	<u>\$ 1,123,908</u>	<u>\$ 486,945</u>

Future principal payments required in accordance with the terms of the 2012 Term Loan and the Senior Notes Indentures are as follows (in thousands):

Year Ending March 31,	Amount
2013	\$ —
2014	—
2015	—
2016	1,400
2017	6,600
Thereafter	1,127,000
	<u>\$ 1,135,000</u>

11. Fair Value Measurements

As we deem appropriate, we may from time to time utilize derivative financial instruments to mitigate the impact of changing interest rates associated with our long-term debt obligations or other derivative financial instruments. While we have utilized derivative financial instruments in the past, we did not have any derivative financial instruments outstanding at March 31, 2012 or 2011. We recorded a charge to interest expense of \$2.9 million during 2010 in connection with an interest rate swap agreement. We have not entered into derivative financial instruments for trading purposes; all of our derivatives were over-the-counter instruments with liquid markets.

For certain of our financial instruments, including cash, accounts receivable, accounts payable and other current liabilities, the carrying amounts approximate their respective fair values due to the relatively short maturity of these amounts.

The Fair Value Measurements and Disclosures topic of the FASB ASC requires fair value to be determined based on the exchange price that would be received for an asset or paid to transfer a liability in the principal or most advantageous market assuming an orderly transaction between market participants. The Fair Value Measurements and Disclosures topic established market (observable inputs) as the preferred source of fair value to be followed by the Company's assumptions of fair value based on hypothetical transactions (unobservable inputs) in the absence of observable market inputs. Based upon the above, the following fair value hierarchy was created:

Level 1 - Quoted market prices for identical instruments in active markets;

Level 2 - Quoted prices for similar instruments in active markets, as well as quoted prices for identical or similar instruments in markets that are not considered active; and

Level 3 - Unobservable inputs developed by the Company using estimates and assumptions reflective of those that would be utilized by a market participant.

The market values have been determined based on market values for similar instruments adjusted for certain factors. As such, the 2012 Term Loan, the 2012 Senior Notes and the 2010 Senior Notes are measured in Level 2 of the above hierarchy. At March 31, 2012 and 2011, we did not have any assets or liabilities measured in Level 2 or 3. During 2012, 2011 and 2010, there were no transfers of assets or liabilities between Levels 1, 2 and 3.

At March 31, 2012, the carrying value and the market value of our 2012 Senior Notes were \$250.0 million and \$270.6 million, respectively, at March 31, 2012.

At March 31, 2012, the carrying value and the market value of the 2012 Term Loan were \$635.0 million and \$639.0 million, respectively, at March 31, 2012.

At March 31, 2012 and March 31, 2011, the carrying value of our 2010 Senior Notes was \$250.0 million and \$250.0 million, respectively. The market value of these notes was approximately \$272.5 million and \$264.4 million at March 31, 2012 and March 31, 2011, respectively.

At March 31, 2011, the carrying value and the market value of the 2010 Term Loan was \$242.0 million and \$243.4 million, respectively. During the year ended March 31, 2012 we repaid the 2010 Term Loan in full.

12. Stockholders' Equity

We are authorized to issue 250.0 million shares of common stock, \$0.01 par value per share, and 5.0 million shares of preferred stock, \$0.01 par value per share. The Board of Directors may direct the issuance of the undesignated preferred stock in one or more series and determine preferences, privileges and restrictions thereof.

Each share of common stock has the right to one vote on all matters submitted to a vote of stockholders. The holders of common stock are also entitled to receive dividends whenever funds are legally available and when declared by the Board of Directors, subject to prior rights of holders of all classes of stock outstanding having priority rights as to dividends. No dividends have been declared or paid on our common stock through March 31, 2012, except as described below.

Effective February 26, 2012, our Board of Directors adopted a stockholder rights plan (the "Rights Plan"). Pursuant to the Rights Plan, the Board of Directors declared a dividend distribution of one preferred share right (a "Right") for each share of common stock held as of March 8, 2012. Each Right entitles the holder to purchase one one-thousandth of a share of Series A Preferred Stock (the "Preferred Shares") at an initial exercise price of \$65.00, subject to dilution adjustments for dividends payable in Preferred Shares or other such events. The Rights Plan is intended to ensure that all of our stockholders receive fair and equal treatment in the event of any proposed takeover of the Company and to protect stockholders' interests in the event we are confronted with partial tender offers or other coercive or unfair takeover tactics.

The Rights become exercisable after ten days following the acquisition by an acquiring person or group of 10% or more of our outstanding common stock ("Acquisition Event"). If such acquiring person or group acquires 10% or more of the common stock, each Right (other than such acquiring person's or group's Rights, whose Rights become void upon exceeding the 10% threshold) will entitle the holder to purchase, at the exercise price, common stock having a market value equal to twice the exercise price of the Right.

The Rights Plan and the Rights will expire on the date of the 2013 Annual Stockholders' Meeting if the plan is not approved by the stockholders. If approved by the stockholders, the Rights Plan and the Rights will expire on February 26, 2022, unless an Acquisition Event occurs earlier. Subject to the provisions of the Rights Plan, at the Company's option, the Rights may be redeemed by the Company at an initial cash redemption price of \$0.01 per Right or may be exchanged in whole or in part for one share of the Company's common stock, or one one-thousandth of a share of Preferred Share.

During March 2012, we recorded a charge against retained earnings in the amount of \$283 related to the fair value of the rights as of the dividend date. For any right that expires unredeemed, the appropriate charge to retained earnings will be reversed.

During 2012, 2011 and 2010, we repurchased 21, 36 and zero shares, respectively, of restricted common stock from current and former employees pursuant to the provisions of the various employee stock purchase agreements. The purchases were at an average price of \$12.86 per share for 2012 and \$9.81 per share for 2011. All of such shares have been recorded as treasury stock.

13. Earnings Per Share

Basic earnings per share is computed based on the weighted-average number of shares of common stock outstanding during the period. Diluted earnings per share is computed based on the weighted-average number of shares of common stock outstanding plus the effect of potentially dilutive common shares outstanding during the period using the treasury stock method, which includes stock options, restricted stock awards, and restricted stock units. The following table sets forth the computation of basic and diluted earnings per share:

(In thousands, except per share data)

	Year Ended March 31,		
	2012	2011	2010
Numerator			
Income from continuing operations	\$ 37,212	\$ 29,179	\$ 32,070
Income from discontinued operations and gain on sale of discontinued operations	—	41	45
Net income	<u>\$ 37,212</u>	<u>\$ 29,220</u>	<u>\$ 32,115</u>
Denominator			
Denominator for basic earnings per share- weighted average shares	50,270	50,081	50,013
Dilutive effect of unvested restricted common stock (including restricted stock units), options and stock appreciation rights issued to employees and directors	478	257	72
Denominator for diluted earnings per share	<u>50,748</u>	<u>50,338</u>	<u>50,085</u>
Earnings per Common Share:			
Basic earnings per share from continuing operations	\$ 0.74	\$ 0.58	\$ 0.64
Basic earnings per share from discontinued operations and gain on sale of discontinued operations	—	—	—
Basic net earnings per share	<u>\$ 0.74</u>	<u>\$ 0.58</u>	<u>\$ 0.64</u>
Diluted earnings per share from continuing operations	\$ 0.73	\$ 0.58	\$ 0.64
Diluted earnings per share from discontinued operations and gain on sale of discontinued operations	—	—	—
Diluted net earnings per share	<u>\$ 0.73</u>	<u>\$ 0.58</u>	<u>\$ 0.64</u>

At March 31, 2012, 2011 and 2010, there were zero, zero and 0.1 million shares of restricted stock awards that have been excluded from the computation of basic earnings per share as these awards were subject to contingencies that were not met as of the end of each respective period. Additionally, for 2012, 2011 and 2010 there were 0.4 million, 0.5 million and 1.3 million shares attributable to outstanding stock-based awards that were excluded from the calculation of diluted earnings per share because their inclusion would have been anti-dilutive.

14. Share-Based Compensation

In connection with our initial public offering, the Board of Directors adopted the 2005 Long-Term Equity Incentive Plan (the "Plan") which provides for the grant, to a maximum of 5.0 million shares of restricted stock, stock options, restricted stock units and other equity-based awards. Directors, officers and other employees of the Company and its subsidiaries, as well as others performing services for the Company, are eligible for grants under the Plan.

During 2012, pre-tax share-based compensation costs charged against income and the related income tax benefit recognized were \$3.1 million and \$1.2 million, respectively. During the year management determined that performance goals associated with the grants of stock to management and employees in May 2008 were met and recorded stock compensation costs accordingly. No prior compensation costs were required to be reversed.

During 2011, pre-tax share-based compensation costs charged against income and the related income tax benefit recognized were \$3.6 million and \$1.4 million, respectively. During the year management determined that performance goals associated with the

grants of stock to management and employees in May 2008 were met and recorded stock compensation costs accordingly. No prior compensation costs were required to be reversed.

During 2010, pre-tax share-based compensation costs charged against income and the related income tax benefit recognized were \$2.1 million and \$0.8 million, respectively. During the year management determined that performance goals associated with the grants of stock to management and employees in May 2008 were met and recorded stock compensation costs accordingly. No prior compensation costs were required to be reversed.

Restricted Shares

Restricted shares granted to employees under the Plan generally vest in three to five years, contingent on the attainment of certain performance goals of the Company, including revenue and earnings before income taxes, depreciation and amortization targets, or the attainment of certain time vesting thresholds. The restricted share awards provide for accelerated vesting if there is a change of control, as defined in the Plan. On January 25, 2012, the Compensation Committee of our Board of Directors granted 95,000 shares of restricted stock units to certain members of executive management. The restricted stock units will vest in equal annual installments over a three year period on the anniversary date of the grants. The grant-date fair value of restricted shares is determined using the closing price of our common stock on the day preceding the grant date. The weighted-average grant-date fair value during 2012, 2011 and 2010 was \$11.81, \$8.99 and \$7.09, respectively.

A summary of the Company's restricted shares granted under the Plan is presented below:

Nonvested Shares	Shares (in thousands)	Weighted-Average Grant-Date Fair Value
Nonvested at March 31, 2009	342.4	\$ 11.31
Granted	171.6	7.09
Vested	(47.8)	10.97
Forfeited	(179.1)	11.28
Nonvested at March 31, 2010	287.1	8.86
Granted	125.0	8.99
Vested	(88.2)	9.63
Forfeited	(48.5)	10.10
Vested and nonvested at March 31, 2011	275.4	8.46
Vested at March 31, 2011	29.2	6.84
Granted	217.5	11.81
Vested	(103.4)	9.93
Forfeited	(26.1)	10.17
Vested and nonvested at March 31, 2012	363.4	9.92
Vested at March 31, 2012	54.0	7.40

Options

The Plan provides that the exercise price of options granted shall be no less than the fair market value of the Company's common stock on the date the options are granted. Options granted have a term of no greater than 10 years from the date of grant and vest in accordance with a schedule determined at the time the option is granted, generally three to five years. The option awards provide for accelerated vesting in the event of a change in control, as defined in the Plan.

The fair value of each option award is estimated on the date of grant using the Black-Scholes Option Pricing Model that uses the assumptions noted in the table below. Expected volatilities are based on the historical volatility of our common stock. We use appropriate historical data, as well as current data, to estimate option exercise and employee termination behaviors. Employees that are expected to exhibit similar exercise or termination behaviors are grouped together for the purposes of valuation. The expected terms of the options granted are derived from our historical experience and management's estimates and represent the period of time that options granted are expected to be outstanding. The risk-free rate represents the yield on U.S. Treasury bonds

with a maturity equal to the expected term of the granted option. The weighted-average grant-date fair value of the options granted during 2012, 2011 and 2010 were \$5.83, \$4.91 and \$3.64, respectively.

	Year Ended March 31,	
	2012	2011
Expected volatility	53.0%	52.8%
Expected dividends	—	—
Expected term in years	6.5	7.0
Risk-free rate	2.4%	3.2%

A summary of option activity under the Plan is as follows:

Options	Shares (in thousands)	Weighted-Average Exercise Price	Weighted- Average Remaining Contractual Term	Aggregate Intrinsic Value (in thousands)
Outstanding at March 31, 2009	662.6	\$ 11.65		
Granted	1,125.0	7.16		
Exercised	—	—		
Forfeited or expired	(203.4)	11.34		
Outstanding at March 31, 2010	1,584.2	8.50		
Granted	418.6	9.26		
Exercised	(33.8)	9.79		
Forfeited or expired	(347.5)	10.74		
Outstanding at March 31, 2011	1,621.5	8.19		
Granted	308.2	11.27		
Exercised	(86.9)	10.24		
Forfeited or expired	(97.4)	11.57		
Outstanding at March 31, 2012	1,745.4	8.44	7.6	\$ 15,772
Exercisable at March 31, 2012	657.2	8.37	7.1	5,985

The aggregate intrinsic value of options exercised during 2012 was \$0.2 million. The aggregate intrinsic value at March 31, 2012 for options granted during 2012 was \$1.9 million. The weighted-average fair value per option at the grant date was \$5.83 for 2012.

At March 31, 2012, there were \$3.5 million of unrecognized compensation costs related to nonvested share-based compensation arrangements under the Plan, based on management's estimate of the shares that will ultimately vest. We expect to recognize such costs over a weighted-average period of 1.0 years. The total fair value of options and restricted shares vested during 2012, 2011 and 2010, was \$2.9 million, \$2.3 million and \$0.5 million, respectively. Cash received from the exercise of stock options was \$0.6 million during 2012 and we realized \$0.3 million in tax benefits for the tax deductions resulting from option exercises. Cash received from the exercise of stock options was \$0.3 million during 2011 and we realized \$0.2 million in tax benefits for the tax deductions resulting from option exercises. There were no options exercised during 2010 and therefore, we did not realize any tax benefits during this period associated with option exercises. At March 31, 2012, there were 2.5 million shares available for issuance under the Plan.

15. Income Taxes

The provision for income taxes from continuing operations consists of the following:

<i>(In thousands)</i>	Year Ended March 31,		
	2012	2011	2010
Current			
Federal	\$ 8,127	\$ 8,793	\$ 10,837
State	1,396	1,496	1,492
Foreign	630	522	415
Deferred			
Federal	13,100	7,211	6,418
State	692	1,327	1,502
Total provision for income taxes from continuing operations	<u>\$ 23,945</u>	<u>\$ 19,349</u>	<u>\$ 20,664</u>

The principal components of our deferred tax balances are as follows:

<i>(In thousands)</i>	March 31,	
	2012	2011
Deferred Tax Assets		
Allowance for doubtful accounts and sales returns	\$ 1,931	\$ 2,701
Inventory capitalization	1,184	812
Inventory reserves	635	260
Net operating loss carryforwards	495	579
Property and equipment	—	—
State income taxes	7,103	7,089
Accrued liabilities	1,762	1,768
Stock compensation	2,536	3,003
Other	1	136
Total deferred tax assets	<u>15,647</u>	<u>16,348</u>
Deferred Tax Liabilities		
Property and equipment	(155)	(65)
Intangible assets	(177,926)	(164,924)
Total deferred tax liabilities	<u>(178,081)</u>	<u>(164,989)</u>
Net deferred tax liability	<u>\$ (162,434)</u>	<u>\$ (148,641)</u>

At March 31, 2012, a wholly-owned subsidiary had a net operating loss carryforward of approximately \$1.4 million which may be used to offset future taxable income of the consolidated group and begins to expire in 2020. The net operating loss carryforward is subject to an annual limitation as to usage under Internal Revenue Code Section 382 of approximately \$0.2 million.

A reconciliation of the effective tax rate compared to the statutory U.S. Federal tax rate is as follows:

<i>(In thousands)</i>	Year Ended March 31,					
	2012		2011		2010	
	\$	%	\$	%	\$	%
Income tax provision at statutory rate	21,405	35.0	17,008	35.0	19,069	35.0
Foreign tax (benefit) provision	191	0.3	(42)	(0.1)	(36)	(0.1)
State income taxes, net of federal income tax benefit	2,073	3.4	1,615	3.3	1,662	3.1
(Decrease) increase in net deferred tax liability resulting from a change in the effective state tax rate	(1,177)	(1.9)	302	0.6	597	1.1
Goodwill	—	—	—	—	1,039	1.9
Nondeductible compensation	1,305	2.1	—	—	—	—
Transaction costs	—	—	367	0.8	—	—
Other	148	0.3	124	0.3	39	0.1
Total provision for income taxes	23,945	39.2	19,374	39.9	22,370	41.1
Amount included in discontinued operations	—	—	25	38.2	1,706	97.5
Provision for income taxes from continuing operations	\$ 23,945	39.2	\$ 19,349	39.9	\$ 20,664	39.2

Uncertain tax liability activity is as follows:

<i>(In thousands)</i>	2012	2011
	\$	\$
Balance – beginning of year	456	315
Additions based on tax positions related to the current year	45	141
Reductions based on lapse of statute of limitations	(209)	—
Balance – end of year	\$ 292	\$ 456

We recognize interest and penalties related to uncertain tax positions as a component of income tax expense. We did not incur any material interest or penalties related to income taxes in any of the periods presented. We do not anticipate any events or circumstances that would cause a material change to these uncertainties during the ensuing year. We are subject to taxation in the United States and various state and foreign jurisdictions and we are generally open to examination from the year ended March 31, 2009 forward.

16. Commitments and Contingencies

We are involved from time to time in routine legal matters and other claims incidental to our business. We review outstanding claims and proceedings internally and with external counsel as necessary to assess probability and amount of potential loss. These assessments are re-evaluated at each reporting period and as new information becomes available to determine whether a reserve should be established or if any existing reserve should be adjusted. The actual cost of resolving a claim or proceeding ultimately may be substantially different than the amount of the recorded reserve. In addition, because it is not permissible under GAAP to establish a litigation reserve until the loss is both probable and estimable, in some cases there may be insufficient time to establish a reserve prior to the actual incurrence of the loss (upon verdict and judgment at trial, for example, or in the case of a quickly negotiated settlement). We believe the resolution of routine matters and other incidental claims, taking our reserves into account, will not have a material adverse effect on our business, financial condition or results from operations.

Lease Commitments

We have operating leases for office facilities and equipment in New York and Wyoming, which expire at various dates through 2014.

The following summarizes future minimum lease payments for our operating leases:

<i>(In thousands)</i>	<u>Facilities</u>	<u>Equipment</u>	<u>Total</u>
Year Ending March 31,			
2013	\$ 1,087	\$ 50	\$ 1,137
2014	719	23	742
2015	56	—	56
2016	—	—	—
2017	—	—	—
	<u>\$ 1,862</u>	<u>\$ 73</u>	<u>\$ 1,935</u>

Rent expense was \$0.9 million for 2012 and \$0.8 million for each of 2011 and 2010.

Purchase Commitments

We have entered into a ten year supply agreement for the exclusive manufacture of a portion of one of our Household Cleaning products. Although we are committed under the supply agreement to pay the minimum amounts set forth in the table below, the total commitment is less than ten percent of the estimated purchases that we expect to make during the course of the agreement.

<i>(In thousands)</i>	
Year Ending March 31,	
2013	\$ 1,166
2014	1,136
2015	1,105
2016	1,074
2017	1,044
Thereafter	2,555
	<u>\$ 8,080</u>

17. Concentrations of Risk

Our sales are concentrated in the areas of OTC Healthcare and Household Cleaning products. We sell our products to mass merchandisers, food and drug accounts, and dollar and club stores. During 2012, 2011 and 2010, approximately 51.3%, 63.3% and 66.6%, respectively, of our total sales were derived from our five top selling brands brands. One customer, Walmart, accounted for more than 10% of our gross revenues for each of the periods presented. During 2012, 2011 and 2010, Walmart accounted for approximately 18.9%, 20.3% and 24.4%, respectively, of our gross revenues. At March 31, 2012, approximately 22.3% of accounts receivable were owed by the same customer.

We manage product distribution in the continental United States through a third-party distribution center in St. Louis, Missouri. A serious disruption, such as a flood or fire, to the main distribution center could damage our inventories and could materially impair our ability to distribute our products to customers in a timely manner or at a reasonable cost. We could incur significantly higher costs and experience longer lead times associated with the distribution of our products to our customers during the time that it takes us to reopen or replace our distribution center. As a result, any such disruption could have a material adverse effect on our sales and profitability.

At March 31, 2012, we had relationships with 42 third-party manufacturers. Of those, we had long-term contracts with 20 manufacturers that produced items that accounted for approximately 70.6% of our gross sales for 2012 compared to 11 manufactures with long-term contracts that accounted for approximately 52.9% of gross sales in 2011. The fact that we do not have long-term contracts with certain manufacturers means that they could cease manufacturing these products at any time and for any reason, or initiate arbitrary and costly price increases which could have a material adverse effect on our business, financial condition and results from operations.

18. Business Segments

Segment information has been prepared in accordance with Segment Reporting topic of the FASB ASC and includes certain information that our chief operating decision maker, the Company's Chief Executive Officer, reviews including contribution

margin, which is a non-GAAP financial measure. Contribution margin is defined as gross profit less advertising and promotional expenses. Our general and administrative expenses and other corporate-level activity is not allocated to our segments including costs of: employee related costs; legal; finance; information technology; corporate development; legal settlements; depreciation and amortization; and facility and insurance costs. As described in Note 2, on September 1, 2010, we sold certain assets related to the *Cutex* nail polish remover brand included in our previously reported Personal Care segment to an unrelated third party. The assets sold comprised a substantial majority of the assets in our previously reported Personal Care segment. The remaining assets and revenues generated do not constitute a reportable segment under the Segment Reporting topic of the FASB ASC. Therefore, we reclassified the remaining assets and results of the Personal Care segment to the OTC Healthcare segment for all periods presented. Our current operating and reportable segments now consist of (i) OTC Healthcare and (ii) Household Cleaning.

There were no inter-segment sales or transfers during any of the periods presented. We evaluate the performance of our operating segments and allocate resources to them based primarily on contribution margin.

The table below summarizes information about our operating and reportable segments.

	Year Ended March 31, 2012		
	OTC Healthcare	Household Cleaning	Consolidated
<i>(In thousands)</i>			
Net sales	\$ 344,282	\$ 93,556	\$ 437,838
Other revenues	719	2,528	3,247
Total revenues	345,001	96,084	441,085
Cost of sales	143,151	70,550	213,701
Gross profit	201,850	25,534	227,384
Advertising and promotion	51,895	5,232	57,127
Contribution margin	\$ 149,955	\$ 20,302	170,257
Other operating expenses			67,434
Operating income			102,823
Other expenses			41,666
Provision for income taxes			23,945
Income from continuing operations			37,212
Income from discontinued operations, net of income tax			—
Loss on sale of discontinued operations, net of income tax benefit			—
Net income			\$ 37,212

Year Ended March 31, 2011

<i>(In thousands)</i>	OTC Healthcare	Household Cleaning	Consolidated
Net sales	\$ 234,042	\$ 99,673	\$ 333,715
Other revenues	543	2,252	2,795
Total revenues	234,585	101,925	336,510
Cost of sales	97,710	67,922	165,632
Gross profit	136,875	34,003	170,878
Advertising and promotion	36,752	6,145	42,897
Contribution margin	<u>\$ 100,123</u>	<u>\$ 27,858</u>	127,981
Other operating expenses			51,836
Operating income			76,145
Other expenses			27,617
Provision for income taxes			19,349
Income from continuing operations			29,179
Income from discontinued operations, net of income tax benefit			591
Loss on sale of discontinued operations, net of income tax			(550)
Net income			<u>\$ 29,220</u>

Year Ended March 31, 2010

<i>(In thousands)</i>	OTC Healthcare	Household Cleaning	Consolidated
Net sales	\$ 178,755	\$ 108,797	\$ 287,552
Other revenues	3,151	1,899	5,050
Total revenues	181,906	110,696	292,602
Cost of sales	67,040	72,118	139,158
Gross profit	114,866	38,578	153,444
Advertising and promotion	24,264	6,659	30,923
Contribution margin	<u>\$ 90,602</u>	<u>\$ 31,919</u>	122,521
Other operating expenses			44,196
Operating income			78,325
Other expenses			25,591
Income tax benefit			20,664
Income from continuing operations			32,070
Loss from discontinued operations, net of income tax			(112)
Gain on sale of discontinued operations, net of income tax			157
Net income			<u>\$ 32,115</u>

<i>(In thousands)</i>	Year Ended March 31,		
	2012	2011	2010
Analgesics	\$ 18,930	\$ 3,063	\$ 3,360
Cough & Cold	116,669	75,013	45,853
Gastrointestinal	29,489	4,067	—
Eye & Ear Care	74,363	70,724	65,274
Dermatologicals	52,592	51,398	47,240
Oral Care	46,551	26,518	16,660
Other OTC	6,407	3,802	3,519
Total OTC Healthcare Segment	345,001	234,585	181,906
Household Cleaning Segment	96,084	101,925	110,696
Consolidated Net Revenues	\$ 441,085	\$ 336,510	\$ 292,602

During 2012, 2011 and 2010, approximately 96.5%, 95.8% and 95.7%, respectively of our sales were made to customers in the United States and Canada. Other than the United States, no individual geographical area accounted for more than 10% of net sales in any of the periods presented. At March 31, 2012, substantially all of our long-term assets were located in the United States of America and have been allocated to the operating segments as follows:

<i>(In thousands)</i>	OTC Healthcare	Household Cleaning	Consolidated
Goodwill	\$ 166,313	\$ 7,389	\$ 173,702
Intangible assets			
Indefinite-lived	1,125,594	119,820	1,245,414
Finite-lived	125,452	29,656	155,108
	1,251,046	149,476	1,400,522
	\$ 1,417,359	\$ 156,865	\$ 1,574,224

19. Gain on Settlement

On June 15, 2011, we received a settlement payment of \$8.0 million in the resolution of pending litigation, which Prestige Brands, Inc. had initiated for legal malpractice, breach of contract and breach of fiduciary duty against a law firm and two individual lawyers who had previously provided legal representation to Prestige Brands, Inc.

Because the result of the litigation could only have resulted in a potential gain and the amount could not be determined prior to the settlement, the settlement payment was not disclosed prior to the actual receipt of the settlement. Additionally, the costs netted against the gain during the period ended June 30, 2011 were legal fees paid solely on a contingent basis and other immaterial legal fees incurred in the period ended June 30, 2011. All other costs and legal fees that were incurred prior to the period ended June 30, 2011 were immaterial and expensed as incurred.

We incurred costs of \$2.9 million in pursuing this matter. Therefore, we recorded a pre-tax gain on settlement of \$5.1 million net of costs incurred and \$3.2 million after income tax effects for the fiscal year ended March 31, 2012. The \$5.1 million pre-tax gain is included in other (income) expense, as this gain did not relate to our ongoing operations.

20. Unaudited Quarterly Financial Information

Unaudited quarterly financial information for 2012 and 2011 is as follows:

Year Ended March 31, 2012

	Quarterly Period Ended			
	June 30, 2011	September 30, 2011	December 31, 2011	March 31, 2012
<i>(In thousands, except for per share data)</i>				
Total revenues	\$ 95,295	\$ 105,544	\$ 106,250	\$ 133,996
Cost of sales	45,427	51,638	51,128	65,508
Gross profit	49,868	53,906	55,122	68,488
Operating expenses				
Advertising and promotion	10,233	13,073	15,274	18,547
General and administrative	9,850	8,861	13,655	24,334
Depreciation and amortization	2,550	2,570	2,563	3,051
	22,633	24,504	31,492	45,932
Operating income	27,235	29,402	23,630	22,556
Net interest expense	8,578	8,279	8,116	16,347
Gain on settlement	(5,063)	—	—	—
Loss on extinguishment of debt	—	—	—	5,409
Income from continuing operations before income taxes	23,720	21,123	15,514	800
Provision for income taxes	8,952	8,174	6,004	815
Income (loss) from continuing operations	14,768	12,949	9,510	(15)
Discontinued Operations				
Income from discontinued operations, net of income tax	—	—	—	—
Gain on sale of discontinued operations, net of income tax	—	—	—	—
Net income (loss)	\$ 14,768	\$ 12,949	\$ 9,510	\$ (15)
Basic earnings per share:				
Income from continuing operations	\$ 0.29	\$ 0.26	\$ 0.19	\$ —
Income (loss) from discontinued operations and gain (loss) from sale of discontinued operations	—	—	—	—
Net income	\$ 0.29	\$ 0.26	\$ 0.19	\$ —
Diluted earnings per share:				
Income from continuing operations	\$ 0.29	\$ 0.26	\$ 0.19	\$ —
Income (loss) from discontinued operations and gain (loss) from sale of discontinued operations	—	—	—	—
Net income	\$ 0.29	\$ 0.26	\$ 0.19	\$ —
Weighted average shares outstanding:				
Basic	50,183	50,278	50,307	50,314
Diluted	50,646	50,671	50,684	50,992

	Quarterly Period Ended			
	June 30, 2010	September 30, 2010	December 31, 2010	March 31, 2011
<i>(In thousands, except for per share data)</i>				
Total revenues	\$ 71,236	\$ 78,303	\$ 90,608	\$ 96,363
Cost of sales	33,265	35,713	46,596	50,058
Gross profit	37,971	42,590	44,012	46,305
Operating expenses				
Advertising and promotion	7,486	8,240	13,049	14,122
General and administrative	7,414	8,101	15,426	11,019
Depreciation and amortization	2,410	2,413	2,513	2,540
	17,310	18,754	30,988	27,681
Operating income	20,661	23,836	13,024	18,624
Net interest expense	5,461	5,373	7,674	8,809
Loss on extinguishment of debt	300	—	—	—
Income from continuing operations before income taxes	14,900	18,463	5,350	9,815
Provision for income taxes	5,691	7,053	3,204	3,401
Income from continuing operations	9,209	11,410	2,146	6,414
Discontinued Operations				
Income from discontinued operations, net of income tax	397	162	32	—
Loss on sale of discontinued operations, net of income tax	—	(550)	—	—
Net income	\$ 9,606	\$ 11,022	\$ 2,178	\$ 6,414
Basic earnings per share:				
Income from continuing operations	\$ 0.18	\$ 0.23	\$ 0.04	\$ 0.13
Income (loss) from discontinued operations and gain (loss) from sale of discontinued operations	0.01	(0.01)	—	—
Net income	\$ 0.19	\$ 0.22	\$ 0.04	\$ 0.13
Diluted earnings per share:				
Income from continuing operations	\$ 0.18	\$ 0.23	\$ 0.04	\$ 0.13
Income (loss) from discontinued operations and gain (loss) from sale of discontinued operations	0.01	(0.01)	—	—
Net income	\$ 0.19	\$ 0.22	\$ 0.04	\$ 0.13
Weighted average shares outstanding:				
Basic	50,038	50,053	50,085	50,129
Diluted	50,105	50,141	50,533	50,555

21. Condensed Consolidating Financial Statements

As described in Note 10, we, together with certain of our 100% owned subsidiaries, have fully and unconditionally guaranteed, on a joint and several basis, the obligations of Prestige Brands, Inc. (a 100% owned subsidiary of the Company) set forth in the Senior Notes Indenture, including, without limitation, the obligation to pay principal and interest with respect to the 2010 Senior Notes and the 2012 Senior Notes, collectively (the "Senior Notes"). The 100% owned subsidiaries of the Company which have guaranteed the Senior Notes are as follows: Prestige Personal Care Holdings, Inc., Prestige Personal Care, Inc., Prestige Services Corp., Prestige Brands Holdings, Inc. (a Virginia corporation), Prestige Brands International, Inc., Medtech Holdings, Inc., Medtech Products Inc., The Cutex Company, The Denorex Company, The Spic and Span Company and Blacksmith Brands, Inc. (collectively, the "Subsidiary Guarantors"). A significant portion of our operating income and cash flow is generated by our subsidiaries. As a result, funds necessary to meet Prestige Brands, Inc.'s debt service obligations are provided in part by distributions or advances from the Company's subsidiaries. Under certain circumstances, contractual and legal restrictions, as well as the financial condition and operating requirements of the Company's subsidiaries, could limit Prestige Brands, Inc.'s ability to obtain cash from our subsidiaries for the purpose of meeting its debt service obligations, including the payment of principal and interest on the Senior Notes. Although holders of the Senior Notes will be direct creditors of the guarantors of the Senior Notes by virtue of the guarantees, we have indirect subsidiaries located primarily in the United Kingdom and in the Netherlands (collectively, the "Non-Guarantor Subsidiaries") that have not guaranteed the Senior Notes, and such subsidiaries will not be obligated with respect to the Senior Notes. As a result, the claims of creditors of the Non-Guarantor Subsidiaries will effectively have priority with respect to the assets and earnings of such companies over the claims of the holders of the Senior Notes.

Presented below are supplemental condensed consolidating balance sheets as of March 31, 2012 and 2011 and condensed consolidating statements of operations and cash flows for each year in the three year period ended March 31, 2012. Such consolidating information includes separate columns for:

- a) Prestige Brands Holdings, Inc., the parent,
- b) Prestige Brands, Inc., the issuer,
- c) Combined Subsidiary Guarantors,
- d) Combined Non-Guarantor Subsidiaries,
- e) Elimination entries necessary to consolidate the Company and all of its subsidiaries.

The condensed consolidating financial statements are presented using the equity method of accounting for investments in 100% owned subsidiaries. Under the equity method, the investments in subsidiaries are recorded at cost and adjusted for our share of the subsidiaries' cumulative results of operations, capital contributions, distributions and other equity changes. The elimination entries principally eliminate investments in subsidiaries and intercompany balances and transactions. The financial information in this footnote should be read in conjunction with the Consolidated Financial Statements presented and other notes related thereto contained in this Annual Report on Form 10-K for the fiscal year ended March 31, 2012.

Condensed Consolidating Statement of Operations
Year Ended March 31, 2012

<i>(In thousands)</i>	Prestige Brands Holdings, Inc.	Prestige Brands, Inc., the issuer	Combined Subsidiary Guarantors	Combined Non- guarantor Subsidiaries	Eliminations	Consolidated
Revenues						
Net sales	\$ —	\$ 340,394	\$ 93,554	\$ 3,890	\$ —	\$ 437,838
Other revenues	—	913	2,528	1,475	(1,669)	3,247
Total Revenues	—	341,307	96,082	5,365	(1,669)	441,085
Cost of Sales						
Cost of sales (exclusive of depreciation shown below)	—	143,220	70,550	1,600	(1,669)	213,701
Gross profit	—	198,087	25,532	3,765	—	227,384
Advertising and promotion	—	50,593	5,231	1,303	—	57,127
General and administrative	16,715	28,360	10,668	957	—	56,700
Depreciation and amortization	537	8,292	1,834	71	—	10,734
Total operating expenses	17,252	87,245	17,733	2,331	—	124,561
Operating income (loss)	(17,252)	110,842	7,799	1,434	—	102,823
Other (income) expense						
Interest income	—	(59,402)	—	(222)	59,606	(18)
Interest expense	—	88,240	12,704	—	(59,606)	41,338
Gain on Settlement	(5,063)	—	—	—	—	(5,063)
Loss on extinguishment of debt	—	5,409	—	—	—	5,409
Equity in income of subsidiaries	(51,184)	—	—	—	51,184	—
Total other (income) expense	(56,247)	34,247	12,704	(222)	51,184	41,666
Income (loss) from continuing operations before income taxes	38,995	76,595	(4,905)	1,656	(51,184)	61,157
Provision (benefit) for income taxes	1,783	23,643	(2,018)	537	—	23,945
Income (loss) from continuing operations	37,212	52,952	(2,887)	1,119	(51,184)	37,212
Discontinued operations						
Income (loss) from discontinued operations, net of income tax	—	—	—	—	—	—
Loss on sale of discontinued operations, net of income tax benefit	—	—	—	—	—	—
Net income (loss)	\$ 37,212	\$ 52,952	\$ (2,887)	\$ 1,119	\$ (51,184)	\$ 37,212

Condensed Consolidating Statement of Operations
Year Ended March 31, 2011

<i>(In thousands)</i>	Prestige Brands Holdings, Inc.	Prestige Brands, Inc., the issuer	Combined Subsidiary Guarantors	Combined Non- guarantor Subsidiaries	Eliminations	Consolidated
Revenues						
Net sales	\$ —	\$ 230,302	\$ 99,672	\$ 3,741	\$ —	\$ 333,715
Other revenues	—	542	2,253	1,666	(1,666)	2,795
Total Revenues	—	230,844	101,925	5,407	(1,666)	336,510
Cost of Sales						
Cost of sales (exclusive of depreciation)	—	97,872	67,923	1,503	(1,666)	165,632
Gross profit	—	132,972	34,002	3,904	—	170,878
Advertising and promotion	—	35,259	6,145	1,493	—	42,897
General and administrative	(298)	30,899	11,289	70	—	41,960
Depreciation and amortization	486	7,473	1,848	69	—	9,876
Total operating expenses (income)	188	73,631	19,282	1,632	—	94,733
Operating (loss) income	(188)	59,341	14,720	2,272	—	76,145
Other (income) expense						
Interest income	(51,909)	(9,116)	—	(189)	61,213	(1)
Interest expense	—	74,409	14,118	4	(61,213)	27,318
Loss on extinguishment of debt	—	300	—	—	—	300
Equity in income of subsidiaries	1,875	—	—	—	(1,875)	—
Total other (income) expense	(50,034)	65,593	14,118	(185)	(1,875)	27,617
Income (loss) from continuing operations before income taxes	49,846	(6,252)	602	2,457	1,875	48,528
Provision (benefit) for income taxes	20,626	(2,081)	274	530	—	19,349
Income (loss) from continuing operations	29,220	(4,171)	328	1,927	1,875	29,179
Discontinued operations						
Income from discontinued operations, net of income tax	—	578	13	—	—	591
Loss on sale of discontinued operations, net of income tax benefit	—	(550)	—	—	—	(550)
Net income (loss)	\$ 29,220	\$ (4,143)	\$ 341	\$ 1,927	\$ 1,875	\$ 29,220

Condensed Consolidating Statement of Operations
Year Ended March 31, 2010

<i>(In thousands)</i>	Prestige Brands Holdings, Inc.	Prestige Brands, Inc., the issuer	Combined Subsidiary Guarantors	Combined Non- guarantor Subsidiaries	Eliminations	Consolidated
Revenues						
Net sales	\$ —	\$ 175,203	\$ 108,797	\$ 3,552	\$ —	\$ 287,552
Other revenues	—	3,150	1,900	1,297	(1,297)	5,050
Total Revenues	—	178,353	110,697	4,849	(1,297)	292,602
Cost of Sales						
Cost of sales (exclusive of depreciation)	—	66,882	72,119	1,454	(1,297)	139,158
Gross profit	—	111,471	38,578	3,395	—	153,444
Operating expenses						
Advertising and promotion	—	22,867	6,659	1,397	—	30,923
General and administrative	533	20,840	12,445	377	—	34,195
Depreciation and amortization	384	7,657	1,889	71	—	10,001
Total operating expenses	917	51,364	20,993	1,845	—	75,119
Operating (loss) income	(917)	60,107	17,585	1,550	—	78,325
Other (income) expense						
Interest income	(52,265)	(9,246)	—	(123)	61,633	(1)
Interest expense	—	70,344	14,215	10	(61,633)	22,936
Loss on extinguishment of debt	—	2,656	—	—	—	2,656
Equity in income of subsidiaries	(808)	—	—	—	808	—
Total other (income) expense	(53,073)	63,754	14,215	(113)	808	25,591
Income (loss) from continuing operations before income taxes	52,156	(3,647)	3,370	1,663	(808)	52,734
Provision (benefit) for income taxes	20,041	(1,266)	1,480	409	—	20,664
Income (loss) from continuing operations	32,115	(2,381)	1,890	1,254	(808)	32,070
Discontinued operations						
Income (loss) from discontinued operations, net of income tax/(benefit)	—	(368)	256	—	—	(112)
Gain/(loss) on sale of discontinued operations, net of income tax/(benefit)	—	787	(630)	—	—	157
Net income (loss)	\$ 32,115	\$ (1,962)	\$ 1,516	\$ 1,254	\$ (808)	\$ 32,115

Condensed Consolidating Balance Sheet
March 31, 2012

<i>(In thousands)</i>	Prestige Brands Holdings, Inc.	Prestige Brands, Inc., the issuer	Combined Subsidiary Guarantors	Combined Non- guarantor Subsidiaries	Eliminations	Consolidated
Assets						
Current assets						
Cash and cash equivalents	\$ 18,221	\$ —	\$ —	\$ 794	\$ —	\$ 19,015
Accounts receivable, net	291	49,958	9,232	747	—	60,228
Inventories	1	41,410	9,021	681	—	51,113
Deferred income tax assets	355	4,112	816	—	—	5,283
Prepaid expenses and other current assets	7,836	3,407	153	—	—	11,396
Total current assets	26,704	98,887	19,222	2,222	—	147,035
Property and equipment, net	934	285	83	2	—	1,304
Goodwill	—	166,312	7,390	—	—	173,702
Intangible assets, net	—	1,250,669	149,476	377	—	1,400,522
Other long-term assets	—	35,713	—	—	—	35,713
Intercompany receivable	1,716,894	1,684,732	91,236	7,801	(3,500,663)	—
Investment in subsidiary	456,120	—	—	—	(456,120)	—
Total Assets	\$ 2,200,652	\$ 3,236,598	\$ 267,407	\$ 10,402	\$ (3,956,783)	\$ 1,758,276
Liabilities and Stockholders' Equity						
Current liabilities						
Accounts payable	\$ 4,532	\$ 13,291	\$ 8,532	\$ 371	\$ —	\$ 26,726
Accrued interest payable	—	13,889	—	—	—	13,889
Other accrued liabilities	12,247	22,066	(11,978)	973	—	23,308
Total current liabilities	16,779	49,246	(3,446)	1,344	—	63,923
Long-term debt						
Principal amount	—	1,135,000	—	—	—	1,135,000
Less unamortized discount	—	(11,092)	—	—	—	(11,092)
Long-term debt, net of unamortized discount	—	1,123,908	—	—	—	1,123,908
Deferred income tax liabilities	(3,643)	143,528	27,749	83	—	167,717
Intercompany payable	1,648,505	1,665,810	172,127	689	(3,487,131)	—
Intercompany equity in subsidiaries	136,286	—	—	—	(136,286)	—
Total Liabilities	1,797,927	2,982,492	196,430	2,116	(3,623,417)	1,355,548
Stockholders' Equity						
Preferred share rights	283	—	—	—	—	283
Common Stock	505	—	—	—	—	505
Additional paid-in capital	391,898	337,458	118,638	24	(456,120)	391,898
Treasury stock	(687)	—	—	—	—	(687)
Accumulated other comprehensive loss, net of tax	(13)	—	—	(13)	13	(13)
Retained earnings (accumulated deficit)	10,739	(89,079)	(47,661)	14,002	122,741	10,742
Intercompany dividends	—	5,727	—	(5,727)	—	—
Total Stockholders' Equity	402,725	254,106	70,977	8,286	(333,366)	402,728
Total Liabilities and Stockholders' Equity	\$ 2,200,652	\$ 3,236,598	\$ 267,407	\$ 10,402	\$ (3,956,783)	\$ 1,758,276

Condensed Consolidating Balance Sheet
March 31, 2011

<i>(In thousands)</i>	Prestige Brands Holdings, Inc.	Prestige Brands, Inc., the issuer	Combined Subsidiary Guarantors	Combined Non- guarantor Subsidiaries	Eliminations	Consolidated
Assets						
Current assets						
Cash and cash equivalents	\$ 12,698	\$ —	\$ —	\$ 636	\$ —	\$ 13,334
Accounts receivable, net	13	34,835	8,842	703	—	44,393
Inventories	—	31,023	8,050	678	—	39,751
Deferred income tax assets	646	4,168	477	1	—	5,292
Prepaid expenses and other current assets	4,505	156	150	1	—	4,812
Total current assets	17,862	70,182	17,519	2,019	—	107,582
Property and equipment, net	1,131	127	173	13	—	1,444
Goodwill	—	147,506	7,390	—	—	154,896
Intangible assets, net	—	634,704	151,220	437	—	786,361
Other long-term assets	—	6,635	—	—	—	6,635
Intercompany receivable	1,007,260	954,317	92,251	4,558	(2,058,386)	—
Investment in subsidiary	456,119	—	—	—	(456,119)	—
Total Assets	\$ 1,482,372	\$ 1,813,471	\$ 268,553	\$ 7,027	\$ (2,514,505)	\$ 1,056,918
Liabilities and Stockholders' Equity						
Current liabilities						
Accounts payable	\$ 1,920	\$ 14,656	\$ 4,627	\$ 412	\$ —	\$ 21,615
Accrued interest payable	—	10,313	—	—	—	10,313
Other accrued liabilities	15,555	15,134	(7,382)	(1,027)	—	22,280
Total current liabilities	17,475	40,103	(2,755)	(615)	—	54,208
Long-term debt						
Principal amount	—	492,000	—	—	—	492,000
Less unamortized discount	—	(5,055)	—	—	—	(5,055)
Long-term debt, net of unamortized discount	—	486,945	—	—	—	486,945
Deferred income tax liabilities	(2,846)	132,549	24,135	95	—	153,933
Intercompany payable	931,601	952,721	173,310	754	(2,058,386)	—
Intercompany equity in subsidiaries	174,310	—	—	—	(174,310)	—
Total Liabilities	1,120,540	1,612,318	194,690	234	(2,232,696)	695,086
Stockholders' Equity						
Common Stock	503	—	—	—	—	503
Additional paid-in capital	387,932	337,458	118,637	24	(456,119)	387,932
Treasury stock	(416)	—	—	—	—	(416)
(Accumulated deficit) Retained earnings	(26,187)	(142,032)	(44,774)	12,496	174,310	(26,187)
Intercompany dividends	—	5,727	—	(5,727)	—	—
Total Stockholders' Equity	361,832	201,153	73,863	6,793	(281,809)	361,832
Total Liabilities and Stockholders' Equity	\$ 1,482,372	\$ 1,813,471	\$ 268,553	\$ 7,027	\$ (2,514,505)	\$ 1,056,918

Condensed Consolidating Statement of Cash Flows
Year Ended March 31, 2012

<i>(In thousands)</i>	Prestige Brands Holdings, Inc.	Prestige Brands, Inc., the issuer	Combined Subsidiary Guarantors	Combined Non- guarantor Subsidiaries	Eliminations	Consolidated
Operating Activities						
Net income (loss)	\$ 37,212	\$ 52,952	\$ (2,887)	\$ 1,119	\$ (51,184)	\$ 37,212
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:						
Depreciation and amortization	537	8,292	1,834	71	—	10,734
Deferred income taxes	(507)	11,023	3,276	1	—	13,793
Amortization of deferred financing costs	—	1,630	—	—	—	1,630
Stock-based compensation costs	3,078	—	—	—	—	3,078
Loss on extinguishment of debt	—	5,409	—	—	—	5,409
Amortization of debt discount	—	1,030	—	—	—	1,030
Changes in operating assets and liabilities						
Accounts receivable	(12)	(15,389)	(390)	(63)	—	(15,854)
Inventories	—	4,683	(972)	(1)	—	3,710
Prepaid expenses and other current assets	(3,598)	591	(3)	1	—	(3,009)
Accounts payable	2,614	(1,365)	3,905	(27)	—	5,127
Accrued liabilities	(5,867)	16,186	(4,596)	(1,131)	—	4,592
Intercompany activity, net	26,866	(34,019)	(2,292)	(200)	9,645	—
Net cash provided by (used in) operating activities	60,323	51,023	(2,125)	(230)	(41,539)	67,452
Investing Activities						
Purchases of equipment	(367)	(239)	—	—	—	(606)
Proceeds from escrow of Blacksmith acquisition	—	1,200	—	—	—	1,200
Acquisition of GSK Brands	—	(662,800)	—	—	—	(662,800)
Intercompany activity, net	1,200	661,600	—	—	(662,800)	—
Net cash provided by (used in) investing activities	833	(239)	—	—	(662,800)	(662,206)
Financing Activities						
Proceeds from issuance of 2012 Senior Notes	—	250,000	—	—	—	250,000
Repayment Of 2010 Senior Term Loan	—	(242,000)	—	—	—	(242,000)
Proceeds from issuance of 2012 Term Loan and 2010 Term Loan	—	650,100	—	—	—	650,100
Payment of deferred financing costs	—	(33,284)	—	—	—	(33,284)
Repayment of 2012 Term Loan	—	(25,000)	—	—	—	(25,000)
Proceeds from exercise of stock options	889	—	—	—	—	889
Shares surrendered as payment of tax withholding	(271)	—	—	—	—	(271)
Intercompany activity, net	(56,251)	(650,600)	2,125	387	704,339	—
Net cash (used in) provided by financing activities	(55,633)	(50,784)	2,125	387	704,339	600,434
Effects of exchange rate changes on cash and cash equivalents	—	—	—	1	—	1
Increase (decrease) in cash	5,523	—	—	158	—	5,681
Cash - beginning of period	12,698	—	—	636	—	13,334
Cash - end of period	\$ 18,221	\$ —	\$ —	\$ 794	\$ —	\$ 19,015

Condensed Consolidating Statement of Cash Flows
Year Ended March 31, 2011

<i>(In thousands)</i>	Prestige Brands Holdings, Inc.	Prestige Brands, Inc., the issuer	Combined Subsidiary Guarantors	Combined Non- guarantor Subsidiaries	Eliminations	Consolidated
Operating Activities						
Net income (loss)	\$ 29,220	\$ (4,143)	\$ 341	\$ 1,927	\$ 1,875	\$ 29,220
Adjustments to reconcile net income (loss) to net cash provided by operating activities:						
Depreciation and amortization	485	7,702	1,849	72	—	10,108
Loss on sale of discontinued operations	—	890	—	—	—	890
Deferred income taxes	(1,174)	6,666	3,832	—	—	9,324
Amortization of deferred financing costs	—	1,043	—	—	—	1,043
Stock-based compensation costs	3,575	—	—	—	—	3,575
Loss on extinguishment of debt	—	300	—	—	—	300
Amortization of debt discount	—	702	—	—	—	702
Loss on disposal of equipment	27	106	20	—	—	153
Changes in operating assets and liabilities						
Accounts receivable	1,041	2,720	1,183	(26)	—	4,918
Inventories	—	13,294	(793)	(58)	—	12,443
Prepaid expenses and other current assets	(62)	118	98	—	—	154
Accounts payable	(605)	1,759	566	64	—	1,784
Accrued liabilities	4,219	11,696	(3,906)	47	—	12,056
Net cash provided by operating activities	<u>36,726</u>	<u>42,853</u>	<u>3,190</u>	<u>2,026</u>	<u>1,875</u>	<u>86,670</u>
Investing Activities						
Purchases of equipment	(595)	(56)	—	(4)	—	(655)
Proceeds from sale of property and equipment	12	—	—	—	—	12
Proceeds from sale of discontinued operations	—	4,122	—	—	—	4,122
Acquisition of Blacksmith, net of cash acquired	(220)	(201,824)	—	—	—	(202,044)
Acquisition of Dramamine	—	(77,115)	—	—	—	(77,115)
Net cash used in investing activities	<u>(803)</u>	<u>(274,873)</u>	<u>—</u>	<u>(4)</u>	<u>—</u>	<u>(275,680)</u>
Financing Activities						
Proceeds from issuance of senior notes	—	100,250	—	—	—	100,250
Proceeds from issuance of senior term loan	—	112,936	—	—	—	112,936
Payment of deferred financing costs	—	(830)	—	—	—	(830)
Repayment of long-term debt	—	(51,087)	—	—	—	(51,087)
Proceeds of exercise of stock options	331	—	—	—	—	331
Purchase of treasury stock	(353)	—	—	—	—	(353)
Intercompany activity, net	(63,847)	70,751	(3,190)	(1,839)	(1,875)	—
Net cash (used in) provided by financing activities	<u>(63,869)</u>	<u>232,020</u>	<u>(3,190)</u>	<u>(1,839)</u>	<u>(1,875)</u>	<u>161,247</u>
(Decrease) increase in cash	(27,946)	—	—	183	—	(27,763)
Cash - beginning of period	40,644	—	—	453	—	41,097
Cash - end of period	<u>\$ 12,698</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 636</u>	<u>\$ —</u>	<u>\$ 13,334</u>

Condensed Consolidating Statement of Cash Flows
Year Ended March 31, 2010

<i>(In thousands)</i>	Prestige Brands Holdings, Inc.	Prestige Brands, Inc., the issuer	Combined Subsidiary Guarantors	Combined Non- guarantor Subsidiaries	Eliminations	Consolidated
Operating Activities						
Net income (loss)	\$ 32,115	\$ (843)	\$ 1,516	\$ 1,254	\$ (1,927)	\$ 32,115
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:						
Depreciation and amortization	384	8,508	2,487	71	—	11,450
Loss (gain) on sale of discontinued operations	—	(1,268)	1,015	—	—	(253)
Deferred income taxes	(1,412)	6,261	6,162	1	—	11,012
Amortization of deferred financing costs	—	1,926	—	—	—	1,926
Impairment of goodwill and intangible assets	—	2,751	—	—	—	2,751
Stock-based compensation costs	2,085	—	—	—	—	2,085
Loss on extinguishment of debt	—	2,166	—	—	—	2,166
Changes in operating assets and liabilities						
Accounts receivable	465	5,578	550	(189)	—	6,404
Inventories	—	(1,798)	(1,247)	(306)	—	(3,351)
Prepaid expenses and other current assets	(3,972)	594	(181)	—	—	(3,559)
Accounts payable	1,263	(526)	(3,824)	(40)	—	(3,127)
Accrued liabilities	(3,217)	7,571	(4,522)	(24)	—	(192)
Net cash provided by (used in) operating activities	27,711	30,920	1,956	767	(1,927)	59,427
Investing Activities						
Purchases of equipment	(610)	(33)	—	(30)	—	(673)
Proceeds from sale of discontinued operations	(1,000)	4,476	4,517	—	—	7,993
Net cash (used in) provided by investing activities	(1,610)	4,443	4,517	(30)	—	7,320
Financing Activities						
Proceed from issuance of debt	—	296,046	—	—	—	296,046
Payment of deferred financing costs	—	(6,627)	—	—	—	(6,627)
Repayment of long-term debt	—	(350,250)	—	—	—	(350,250)
Intercompany activity, net	(19,915)	25,468	(6,473)	(1,007)	1,927	—
Net cash (used in) provided by financing activities	(19,915)	(35,363)	(6,473)	(1,007)	1,927	(60,831)
Increase (decrease) in cash	6,186	—	—	(270)	—	5,916
Cash - beginning of period	34,458	—	—	723	—	35,181
Cash - end of period	\$ 40,644	\$ —	\$ —	\$ 453	\$ —	\$ 41,097

22. Subsequent Events

On May 9, 2012, the Compensation Committee of our Board of Directors granted 111,152 shares of restricted common stock units and stock options to acquire 422,962 shares of our common stock to certain executive officers and employees under the Plan. The restricted common stock units vest in their entirety on the three-year anniversary of the date of grant. Upon vesting, the units will be settled in shares of our common stock. The stock options will vest 33.3% per year over three years and are exercisable for up to ten years from the date of grant. These stock options were granted at an exercise price of \$13.24 per share, which is equal to the closing price for our common stock on the day of the grant. Termination of employment prior to vesting will result in forfeiture of the restricted common stock units and unvested stock options. Vested stock options will remain exercisable by an employee after termination, subject to the terms of the Plan.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

The Company's management, with the participation of its Chief Executive Officer and the Chief Financial Officer, evaluated the effectiveness of the Company's disclosure controls and procedures, as defined in Rule 13a-15(e) of the Exchange Act as of March 31, 2012. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that, as of March 31, 2012, the Company's disclosure controls and procedures were effective to ensure that information required to be disclosed by the Company in the reports the Company files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Management's Annual Report on Internal Control over Financial Reporting

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act). Internal control over financial reporting is a process designed by, or under the supervision of the Chief Executive Officer and Chief Financial Officer and effected by the Board of Directors, management and other personnel, to provide reasonable assurance regarding reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable, not absolute, assurance that the control objectives will be met. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate over time.

Management, with the participation of the Chief Executive Officer and Chief Financial Officer, has assessed the effectiveness of the Company's internal control over financial reporting as of March 31, 2012. In making its assessment, management has used the criteria established by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control – Integrated Framework* (the "COSO Criteria").

Based on management's assessment utilizing the COSO Criteria, management concluded that the Company's internal control over financial reporting was effective as of March 31, 2012.

PricewaterhouseCoopers LLP, an independent registered public accounting firm, has issued an attestation report on our internal control over financial reporting, which appears at page 54 and is incorporated by reference to Part II, Item 8 of this Annual Report on Form 10-K.

Changes in Internal Control over Financial Reporting

There have been no changes during the quarter ended March 31, 2012 in the Company's internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

Part III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information required to be disclosed by this Item will be contained in the Company's 2012 Proxy Statement under the headings "Election of Directors," "Executive Compensation and Other Matters," "Section 16(a) Beneficial Ownership Reporting Compliance" and "Governance of the Company", which information is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

Information required to be disclosed by this Item will be contained in the Company's 2012 Proxy Statement under the headings "Executive Compensation and Other Matters" and "Governance of the Company", which information is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information required to be disclosed by this Item will be contained in the Company's 2012 Proxy Statement under the headings "Security Ownership of Certain Beneficial Owners and Management" and "Securities Authorized for Issuance Under Equity Compensation Plans", which information is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required to be disclosed by this Item will be contained in the Company's 2012 Proxy Statement under the headings "Certain Relationships and Related Transactions", "Election of Directors" and "Governance of the Company", which information is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Information required to be disclosed by this Item will be contained in the Company's 2012 Proxy Statement under the heading "Ratification of Appointment of the Independent Registered Public Accounting Firm", which information is incorporated herein by reference.

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) Financial Statements

The financial statements and financial statement schedules listed below are set forth under Part II, Item 8 (pages 53 through 96) of this Annual Report on Form 10-K, which are incorporated herein to this Item as if copied verbatim.

Prestige Brands Holdings, Inc.

Report of Independent Registered Public Accounting Firm,
PricewaterhouseCoopers LLP

Consolidated Statements of Operations for each of the three years in
the period ended March 31, 2012

Consolidated Balance Sheets at March 31, 2012 and 2011

Consolidated Statements of Changes in Stockholders' Equity and Comprehensive
Income for each of the three years in the period ended March 31, 2012

Consolidated Statements of Cash Flows for each of the three years
in the period ended March 31, 2012

Notes to Consolidated Financial Statements

Schedule II—Valuation and Qualifying Accounts

(a)(2) Financial Statement Schedules

Schedule II - Valuation and Qualifying Accounts listed in (a)(1) above is incorporated herein by reference as if copied verbatim. Schedules other than those listed in the preceding sentence have been omitted as they are either not required, not applicable, or the information has otherwise been shown in the consolidated financial statements or notes thereto.

(b) Exhibits

See Exhibit Index immediately following the financial statements and financial statement schedules of this Annual Report on Form 10-K.

SIGNATURES

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

PRESTIGE BRANDS HOLDINGS, INC.

By: /s/ RONALD M. LOMBARDI

Name: Ronald M. Lombardi

Title: Chief Financial Officer

Date: May 17, 2012

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ MATTHEW M. MANNELLY</u> Matthew M. Mannelly	Director, President and Chief Executive Officer (Principal Executive Officer)	May 17, 2012
<u>/s/ RONALD M. LOMBARDI</u> Ronald M. Lombardi	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	May 17, 2012
<u>/s/ JOHN E. BYOM</u> John E. Byom	Director	May 17, 2012
<u>/s/ GARY E. COSTLEY</u> Gary E. Costley	Director	May 17, 2012
<u>/s/ CHARLES J. HINKATY</u> Charles J. Hinkaty	Director	May 17, 2012
<u>/s/ PATRICK M. LONERGAN</u> Patrick M. Lonergan	Director	May 17, 2012

SCHEDULE II

VALUATION AND QUALIFYING ACCOUNTS

<i>(In thousands)</i>	Balance at Beginning of Year	Amounts Charged to Expense	Deductions	Other	Balance at End of Year
Year Ended March 31, 2012					
Reserves for sales returns and allowance	\$ 6,208	\$ 23,457	\$ (25,408)	\$ —	\$ 4,257
Reserves for trade promotions	4,853	32,185	(31,532)	—	5,506
Reserves for consumer coupon redemptions	2,723	7,180	(6,394)	—	3,509
Allowance for doubtful accounts	444	200	(40)	—	604
Year Ended March 31, 2011					
Reserves for sales returns and allowance	6,221	17,316	(17,746)	417 (2)	6,208
Reserves for trade promotions	2,051	23,906 (1)	(23,350)	2,246 (2)	4,853
Reserves for consumer coupon redemptions	263	3,932 (1)	(3,090)	1,618 (2)	2,723
Allowance for doubtful accounts	273	180	(16)	7 (2)	444
Year Ended March 31, 2010					
Reserves for sales returns and allowance	2,457	20,042	(16,278)	—	6,221
Reserves for trade promotions	2,440	20,362	(20,751)	—	2,051
Reserves for consumer coupon redemptions	297	1,281	(1,315)	—	263
Allowance for doubtful accounts	120	200	(47)	—	273

(1) We increased our reserves for Trade Promotion and Consumer Coupon Redemption by \$3.0 million and \$2.0 million, respectively, in an effort to gain market share for the *PediaCare* brand.

(2) Reflect the applicable amounts acquired from the purchase of Blacksmith on November 1, 2010.

EXHIBIT INDEX

Exhibit No.	Description
2.1	Stock Purchase Agreement, dated as of September 14, 2010, by and among Prestige Brands Holdings, Inc., Blacksmith Brands Holdings, Inc. and the Stockholders of Blacksmith Brands Holdings, Inc. (filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the SEC on September 20, 2010).+
2.2	Asset Purchase Agreement, dated as of December 15, 2010, by and between McNeil-PPC, Inc. and Prestige Brands Holdings, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the SEC on December 17, 2010).+
2.3	Business Sale and Purchase Agreement, dated December 20, 2011, between GlaxoSmithKline LLC, GlaxoSmithKline plc and certain of its affiliates and Prestige Brands Holdings, Inc. (filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the SEC on December 27, 2011).+
2.4	Business Sale and Purchase Agreement, dated December 20, 2011 between GlaxoSmithKline LC, GlaxoSmithKline Consumer Healthcare L.P., GlaxoSmithKline plc and Prestige Brands Holdings, Inc. (filed as Exhibit 2.2 to the Company's Current Report on Form 8-K filed with the SEC on December 20, 2011).+
3.1	Amended and Restated Certificate of Incorporation of Prestige Brands Holdings, Inc. (filed as Exhibit 3.1 to the Company's Form S-1/A filed with the SEC on February 8, 2005).+
3.2	Amended and Restated Bylaws of Prestige Brands Holdings, Inc., as amended (filed as Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 6, 2009).+
3.3	Certificate of Designations of Series A Preferred Stock of Prestige Brands Holdings, Inc., as filed with the Secretary of State of the State of Delaware on February 27, 2012 (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on February 28, 2012).+
4.1	Form of stock certificate for common stock (filed as Exhibit 4.1 to the Company's Form S-1/A filed with the SEC on January 26, 2005).+
4.2	Indenture, dated as of March 24, 2010, by and among Prestige Brands, Inc., each Guarantor listed on the signature pages thereto, and U.S. Bank National Association, as trustee (filed as Exhibit 4.2 to the Company's Annual Report on Form 10-K filed with the SEC on June 11, 2010).+
4.3	First Supplemental Indenture dated as of November 1, 2010, by and among Prestige Brands, Inc., the Guarantors listed on the signature pages thereto and U.S. Bank National Association, as trustee (filed as Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q filed with the SEC on February 9, 2011).+
4.4	Form of 8¼% Senior Note due 2018 (contained in Exhibit 4.2 to the Company's Annual Report on Form 10-K filed on June 11, 2010).+
4.5	Indenture, dated as of January 31, 2012, among Prestige Brands, Inc., as issuer, the Company and certain subsidiaries, as guarantors, and U.S. Bank National Association, as Trustee with respect to 8.125% Senior Notes Due 2020.*
4.6	Form of 8.125% Senior Note due 2020 (contained in Exhibit 4.5 to the Company's Annual Report on Form 10-K filed herewith).*
4.7	Rights Agreement, dated as of February 27, 2012, between Prestige Brands Holdings, Inc. and Computershare Trust Company, N.A., as Rights Agent (filed as Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the SEC on February 28, 2012).+
10.1	Note Purchase Agreement entered into on January 24, 2012 with respect to the sale by Prestige Brands, Inc., as issuer, of \$250.0 million in aggregate principal amount of 8.125% Senior Notes due 2020.*
10.2	Registration Rights Agreement, dated as of January 31, 2012, among Prestige Brands, Inc., the Company, and certain subsidiaries of the Company, as guarantors, and Morgan Stanley & Co., LLC, Citigroup Global Markets Inc., RBC Capital Markets, LLC and Deutsche Bank Securities Inc.*
10.3	\$660,000,000 Term Loan Credit Agreement, dated as of January 31, 2012, among Prestige Brands Inc., the Company, and certain subsidiaries of the Company as guarantors, Citibank, N.A., Citigroup Global Markets Inc., Morgan Stanley Senior Funding, Inc. and RBC Capital Markets.*
10.4	Term Loan Security Agreement, dated as of January 31, 2012, among Prestige Brands Inc., the Company and certain subsidiaries of the Company as guarantors, Citibank N.A. and U.S. Bank National Association, as Trustee.*

- 10.5 \$50,000,000 ABL Credit Agreement, dated as of January 31, 2012, Among Prestige Brands, Inc., the Company, certain subsidiaries of the Company as guarantors, Citibank, N.A., Citigroup Global Markets Inc., Morgan Stanley Senior Funding, Inc. and RBC Capital Markets.*
- 10.6 Registration Rights Agreement, dated as of November 1, 2010, by and among Prestige Brands, Inc., each Guarantor listed on the signature pages thereto, Merrill Lynch, Pierce, Fenner & Smith Incorporated (formerly known as Banc of America Securities LLC) and Deutsche Bank Securities Inc. (filed as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed with the SEC on February 9, 2011).+
- 10.7 Executive Employment Agreement, dated as of September 2, 2009, by and between Prestige Brands Holdings, Inc. and Matthew M. Mannelly (filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 6, 2009).+@
- 10.8 Executive Employment Agreement, dated as of August 21, 2006, between Prestige Brands Holdings, Inc. and Jean A. Boyko (filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2006).+@
- 10.9 Executive Employment Agreement, dated as of October 1, 2007, between Prestige Brands Holdings, Inc. and John Parkinson (filed as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed with the SEC on February 8, 2008).+@
- 10.10 Executive Employment Agreement, dated as of April 19, 2010, between Prestige Brands Holdings, Inc. and Timothy Connors (filed as Exhibit 10.16 to the Company's Annual Report on Form 10-K filed with the SEC on June 11, 2010).+@
- 10.11 Executive Employment Agreement, dated as of December 6, 2010, between Prestige Brands Holdings, Inc. and Ronald M. Lombardi (filed as Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q filed with the SEC on February 9, 2011).+@
- 10.12 Executive Employment Agreement, dated as of March 4, 2011, between Prestige Brands Holdings, Inc. and Paul Hennessey (filed as Exhibit 10.15 to the Company's Annual Report on Form 10-K filed with the SEC on May 13, 2011).+@
- 10.13 Executive Employment Agreement, dated as of February 29, 2012, by and between Prestige Brands Holdings, Inc. and Samuel C. Cowley.*@
- 10.14 Prestige Brands Holdings, Inc. 2005 Long-Term Equity Incentive Plan (filed as Exhibit 10.38 to the Company's Form S-1/A filed with the SEC on January 26, 2005).+ #
- 10.15 Form of Restricted Stock Grant Agreement (filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the SEC on August 9, 2005).+ #
- 10.16 Form of Nonqualified Stock Option Agreement (filed as Exhibit 10.28 to the Company's Annual Report on Form 10-K filed with the SEC on June 14, 2007).+ #
- 10.17 Form of Award Agreement for Restricted Stock Units (filed as Exhibit 10.24 to the Company's Annual Report on Form 10-K filed with the SEC on June 15, 2009).+ #
- 10.18 Form of Director Indemnification Agreement (filed as Exhibit 10.25 to the Company's Annual Report on Form 10-K filed with the SEC on June 15, 2009).+@
- 10.19 Form of Officer Indemnification Agreement (filed as Exhibit 10.26 to the Company's Annual Report on Form 10-K filed with the SEC on June 15, 2009).+@
- 10.20 Patent and Technology License Agreement, dated October 2, 2001, between The Procter & Gamble Company and Prestige Brands International, Inc. (filed as Exhibit 10.29 to Company's Form S-4/A filed with the SEC on August 19, 2004).+ †
- 10.21 Amendment No. 1 dated April 30, 2003 to the Patent and Technology License Agreement, dated October 2, 2001, between The Procter & Gamble Company and Prestige Brands International, Inc. (filed as Exhibit 10.30 to the Company's Form S-4/A filed with the SEC on August 19, 2004).+
- 10.22 Trademark License Agreement and Option to Purchase, dated September 8, 2005, by and among The Procter & Gamble Company and Prestige Brands Holdings, Inc. (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on September 12, 2005).+
- 10.23 Exclusive Supply Agreement, dated as of September 18, 2006, among Medtech Products Inc., Pharmicare Limited, Prestige Brands Holdings, Inc. and Aspen Pharmicare Holdings Limited (filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2006).+
- 10.24 Contract Manufacturing Agreement, dated December 21, 2007, between Medtech Products Inc. and Pharmspray B.V. (filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the SEC on February 8, 2008).+

- 10.25 Contract Manufacturing Agreement, dated December 21, 2007, between Medtech Products Inc. and Pharmaspray B.V. (filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed with the SEC on February 8, 2008).+
- 10.26 Supply Agreement, dated May 15, 2008, by and between Fitzpatrick Bros., Inc. and The Spic and Span Company (filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed with the SEC on August 11, 2008).+†
- 10.27 First Amendment to Supply Agreement, dated as of March 1, 2011, between Fitzpatrick Bros., Inc. and The Spic and Span Company.†
- 10.28 Transitional Manufacturing and Supply Agreement, dated January 31, 2012 between Medtech Products Inc. and GlaxoSmithKline Consumer Healthcare L.P. *†
- 21.1 Subsidiaries of the Registrant.*
- 23.1 Consent of PricewaterhouseCoopers LLP.*
- 31.1 Certification of Principal Executive Officer of Prestige Brands Holdings, Inc. pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
- 31.2 Certification of Principal Financial Officer of Prestige Brands Holdings, Inc. pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
- 32.1 Certification of Principal Executive Officer of Prestige Brands Holdings, Inc. pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934 and Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*
- 32.2 Certification of Principal Financial Officer of Prestige Brands Holdings, Inc. pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934 and Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*

* Filed herewith.

† Certain confidential portions have been omitted pursuant to a confidential treatment request separately filed with the SEC.

+ Incorporated herein by reference.

@ Represents a management contract.

Represents a compensatory plan.

INDENTURE

Dated as of January 31, 2012

Among

PRESTIGE BRANDS, INC., as the Issuer,

the Guarantors from time to time party hereto

and

U.S. BANK NATIONAL ASSOCIATION,

as Trustee

8.125% SENIOR NOTES DUE 2020

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310 (a)(1)	7.1
(a)(2)	7.1
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.1
(b)	7.03; 7.10
(c)	N.A.
311 (a)	7.11
(b)	7.11
(c)	N.A.
312 (a)	2.05
(b)	12.03
(c)	12.03
313 (a)	7.06
(b)(1)	N.A.
(b)(2)	7.06; 7.07
(c)	7.06; 12.02
(d)	7.06
314(a)	4.03; 12.05
(b)	N.A.
(c)(1)	12.04
(c)(2)	12.04
(c)(3)	N.A.
(d)	N.A.
(e)	12.05
(f)	N.A.
315 (a)	7.01
(b)	7.05; 12.02
(c)	7.01
(d)	7.01
(e)	6.14
316 (a)(last sentence)	2.09
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
(c)	2.12; 9.04
317 (a)(1)	6.08
(a)(2)	6.12
(b)	2.04
318 (a)	12.01
(b)	N.A.
(c)	12.01

N.A. means not applicable.

* This Cross-Reference Table is not part of this Indenture.

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EXHIBITS

Exhibit A	FORM OF NOTE
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Exhibit D	FORM OF SUPPLEMENTAL INDENTURE TO BE DELIVERED BY SUBSEQUENT GUARANTORS

INDENTURE, dated as of January 31, 2012, among Prestige Brands, Inc., a Delaware corporation, the Guarantors (as defined herein) from time to time party hereto and U.S. Bank National Association, a national banking association, as Trustee.

W I T N E S S E T H

WHEREAS, the Issuer (as defined herein) has duly authorized the creation of an issue of \$250,000,000 aggregate principal amount of the Issuer's 8.125% Senior Notes due 2020 (the "**Initial Notes**");

WHEREAS, the Issuer has duly authorized the execution and delivery of this Indenture (as defined herein);

NOW, THEREFORE, the Issuer, each Guarantor and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined herein).

ARTICLE I
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. *Definitions.*

"**144A Global Note**" means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"**ABL Facility**" means the credit facility provided under the ABL Credit Agreement dated as of the Issue Date among Parent, the Issuer, the lenders party thereto from time to time in their capacities as lenders thereunder, and Citibank, N.A., as administrative agent and collateral agent, and the other parties thereto including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, replacements, renewals, restatements, refundings or refinancings thereof and any one or more indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that extend, replace, refund, refinance, renew or defease any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

"**Acquired Indebtedness**" means, with respect to any specified Person,

(a) Indebtedness of any other Person existing at the time such other Person is merged or consolidated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging or consolidating with or into or becoming a Restricted Subsidiary of such specified Person, and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"**Acquisition**" means the acquisition by Parent and its Subsidiaries of certain over-the-counter healthcare assets pursuant to the Acquisition Agreements.

“**Acquisition Agreements**” means the Issue Date Acquisition Agreement and the Supplemental Acquisition Agreement.

“**Additional Interest**” means all additional interest then owing pursuant to the Registration Rights Agreement.

“**Additional Notes**” means any additional Notes (other than the Initial Notes or any Exchange Notes issued in exchange for such Initial Notes) issued from time to time under this Indenture in accordance with Sections 2.01, 2.02 and 4.09 hereof.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “**control**” (including, with correlative meanings, the terms “**controlling**,” “**controlled by**” and “**under common control with**”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“**Agent**” means any Registrar, Transfer Agent or Paying Agent.

“**Agent’s Message**” means a message transmitted by DTC to, and received by, the Depository and forming a part of the book-entry confirmation, which states that DTC has received an express acknowledgment from each participant in DTC tendering the Notes and that such participants have received the Letter of Transmittal and agree to be bound by the terms of the Letter of Transmittal and the Issuer may enforce such agreement against such participants.

“**Applicable Premium**” means, with respect to any Note on any Redemption Date, the greater of:

(a) 1.0% of the principal amount of such Note, and

(b) the excess, if any, of (i) the present value at such Redemption Date of (A) the redemption price of such Note at February 1, 2016 (such redemption price being set forth in the table set forth in Section 3.07(b) hereof), plus (B) all required remaining scheduled interest payments due on such Note through February 1, 2016 (excluding accrued but unpaid interest to the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points over (ii) the then outstanding principal amount of such Note.

“**Applicable Procedures**” means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depository, Euroclear and/or Clearstream that apply to such transfer or exchange.

“**Asset Sale**” means:

(a) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions (including by way of a Sale and Lease-Back Transaction) of property or assets of Parent or any of its Restricted Subsidiaries (each referred to in this definition as a “**disposition**”); or

(b) the issuance or sale of Equity Interests of any Restricted Subsidiary (other than Preferred Stock of Restricted Subsidiaries issued in compliance with Section 4.09 hereof, whether in a single transaction or a series of related transactions);

in each case, other than:

- (i) any disposition of Cash Equivalents or Investment Grade Securities or obsolete or worn out property or equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale or no longer used or useful in the ordinary course of business;
- (ii) the disposition of all or substantially all of the assets of Parent in a manner permitted pursuant to Section 5.01 hereof or any disposition that constitutes a Change of Control;
- (iii) the making of any Restricted Payment that is permitted to be made, and is made, under Section 4.07 hereof or any Permitted Investment;
- (iv) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of related transactions with an aggregate fair market value of less than \$10.0 million;
- (v) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to Parent or by Parent or a Restricted Subsidiary to a Restricted Subsidiary;
- (vi) to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, any exchange of like property (excluding any boot thereon) for use in a Similar Business;
- (vii) the lease, assignment, sub-lease, license or sub-license of any real or personal property in the ordinary course of business;
- (viii) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;
- (ix) foreclosures, condemnation, expropriation or any similar action with respect to assets or the granting of Liens not prohibited by this Indenture;
- (x) sales of accounts receivable, or participations therein, or Securitization Assets (other than royalties or other revenues (except accounts receivable)) or related assets in connection with any Qualified Securitization Facility or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business;
- (xi) any financing transaction with respect to property built or acquired by Parent or any Restricted Subsidiary after the Issue Date, including Sale and Lease-Back Transactions and asset securitizations permitted by this Indenture;
- (xii) the sale or discount of inventory, accounts receivable or notes receivable in the ordinary course of business or the conversion of accounts receivable to notes receivable;
- (xiii) the licensing or sub-licensing of intellectual property or other general intangibles in the ordinary course of business, other than the licensing of intellectual property on a long-term basis;
- (xiv) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims;

(xv) the unwinding of any Hedging Obligations;

(xvi) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(xvii) the abandonment of intellectual property rights in the ordinary course of business, which in the reasonable good faith determination of Parent are not material to the conduct of the business of Parent and its Restricted Subsidiaries taken as a whole;

(xviii) the issuance by a Restricted Subsidiary of Preferred Stock or Disqualified Stock that is permitted by Section 4.09 hereof;

(xix) the granting of a Lien that is permitted by Section 4.12 hereof;

(xx) the issuance of directors' qualifying shares and shares issued to foreign nationals as required by applicable law;

(xxi) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements; or

(xxii) any disposition of Equity Interests of a Restricted Subsidiary, in each case, pursuant to an agreement or other obligation with or to a Person (other than Parent, the Issuer or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired, or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition.

"Bank Products" means any facilities or services related to cash management, including treasury, depository, overdraft, credit or debit card, purchase card, electronic funds transfer and other cash management arrangements.

"Bankruptcy Law" means Title 11, U.S. Code, as amended, or any similar federal or state law for the relief of debtors.

"Borrowing Base" means 85% of the book value of the receivables and 75% of the book value of the inventory, in each case, of Parent and its Restricted Subsidiaries as of the date of the most recent internally available consolidated balance sheet of Parent on the date of determination determined on a pro forma basis to include any asset directly or indirectly acquired or disposed of by Parent and its Restricted Subsidiaries.

"Business Day" means each day which is not a Legal Holiday.

"Capital Stock" means:

- (a) in the case of a corporation, corporate stock or shares in the capital of such corporation;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“**Capitalized Lease Obligation**” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

“**Cash Equivalents**” means:

(a) United States dollars;

(b) (i) Canadian dollars, pounds sterling, yen, euros or any national currency of any participating member state of the EMU; or (ii) in the case of any Foreign Subsidiary that is a Restricted Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(c) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;

(d) certificates of deposit, time deposits and eurodollar time deposits with maturities of 24 months or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than \$250.0 million;

(e) repurchase obligations for underlying securities of the types described in clauses (c), (d), (g) and (h) entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (d) above;

(f) commercial paper and variable or fixed rate notes rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of creation thereof;

(g) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency);

(h) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency) with maturities of 24 months or less from the date of acquisition;

(i) readily marketable direct obligations issued by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent

rating from another Rating Agency) with maturities of 24 months or less from the date of acquisition;

(j) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another Rating Agency);

(k) securities with maturities of 12 months or less from the date of acquisition backed by standby letters of credit issued by any financial institution or recognized securities dealer meeting the qualifications specified in clause (d) above; and

(l) investment funds investing substantially all of their assets in securities of the types described in clauses (a) through (k) above.

In the case of Investments by any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (l) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries that are Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (l) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (a) and (b) above, *provided* that such amounts are converted into any currency listed in clauses (a) and (b) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

"Change of Control" means the occurrence of any of the following after the Issue Date:

(a) the Issuer becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Issue Date, but excluding any employee benefit plan of such person and its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), shall have, directly or indirectly (including by way of merger or consolidation), acquired beneficial ownership of Equity Interests representing 50% or more of the aggregate voting power represented by the issued and outstanding Equity Interests of Parent; or

(b) the Issuer shall cease to be a Subsidiary of Parent except in connection with a merger, amalgamation or combination between the Issuer and Parent or a Restricted Subsidiary permitted pursuant to Section 5.01 hereof.

"Consolidated Depreciation and Amortization Expense" means with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person, including the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"Consolidated Interest Expense" means, with respect to any Person for any period, without duplication, the sum of:

(a) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (i) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (ii) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (iii) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (iv) the interest component of Capitalized Lease Obligations, and (v) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (r) annual agency fees paid to the administrative agents and collateral agents under any Credit Facilities, (s) non-interest costs associated with obtaining Hedging Obligations, (t) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or, if applicable, purchase accounting in connection with the Transactions or any acquisition, (u) penalties and interest relating to taxes, (v) any Additional Interest and any “additional interest” or “liquidated damages” with respect to other securities for failure to timely comply with registration rights obligations, (w) amortization or expensing of deferred financing fees, amendment and consent fees, debt issuance costs, commissions, fees and expenses and discounted liabilities, (x) any expensing of bridge, commitment and other financing fees and any other fees related to the Transactions or any acquisitions after the Issue Date, (y) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Facility and (z) any accretion of accrued interest on discounted liabilities and any prepayment premium or penalty); *plus*

(b) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; *less*

(c) interest income of such Person and its Restricted Subsidiaries for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“**Consolidated Net Income**” means, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; *provided*, that, without duplication,

(a) except for purposes of increasing the basket under Section 4.07(a)(C)(1) hereof, any after-tax effect of extraordinary, non-recurring or unusual items (including gains or losses and all fees and expenses relating thereto) for such period shall be excluded,

(b) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period shall be excluded,

(c) any net after-tax effect of gains or losses on disposal, abandonment or discontinuance of disposed, abandoned or discontinued operations, as applicable, shall be excluded,

(d) any net after-tax effect of gains or losses (less all fees, expenses and charges relating thereto) attributable to asset dispositions or abandonments or the sale or other disposition of any Capital Stock of any Person other than in the ordinary course of business shall be excluded,

(e) the Net Income for such period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting shall be excluded; *provided*, that Consolidated Net Income of such Person shall be increased by the amount of dividends or

distributions or other payments that are actually paid in cash (or to the extent converted into cash) to such Person or a Restricted Subsidiary thereof in respect of such period,

(f) solely for the purpose of determining the amount available for Restricted Payments under Section 4.07(a)(C)(1) hereof, the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders (other than restrictions in the Notes or this Indenture), unless such restriction with respect to the payment of dividends or similar distributions has been legally waived, *provided* that Consolidated Net Income of such Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein,

(g) effects of adjustments in such Person's consolidated financial statements pursuant to GAAP (including in the inventory, property and equipment, software, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) resulting from the application of purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition or joint venture investment or the amortization or write-off or write-down of any amounts thereof, net of taxes, shall be excluded,

(h) any after-tax effect of income (loss) from the early extinguishment or conversion of (i) Indebtedness, (ii) Hedging Obligations or (iii) other derivative instruments shall be excluded,

(i) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, investments in debt and equity securities and investments recorded using the equity method or as a result of a change in law or regulation, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(j) any equity-based or non-cash compensation charge or expense including any such charge or expense arising from grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs, and any cash charges associated with the rollover, acceleration, or payout of Equity Interests by management of Parent in connection with the Transactions, shall be excluded,

(k) any fees, expenses or charges incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the offering and issuance of the Notes and other securities and the syndication and incurrence of any Credit Facilities), issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the Notes and other securities and any Credit Facilities) and including, in each case, any such transaction consummated on or prior to the Issue Date and any such transaction undertaken but not completed, and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt the effects of expensing all transaction related expenses in accordance with Financial Accounting Standards Board Accounting Standards Codification 805), shall be excluded,

(l) accruals and reserves that are established within twelve months after the Issue Date that are so required to be established as a result of the Transactions (or within twelve months after the closing of any acquisition that are so required to be established as a result of such acquisition) in accordance with GAAP shall be excluded,

(m) any expenses, charges or losses to the extent covered by insurance or indemnity and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer or indemnifying party and only to the extent that such amount is in fact reimbursed within 365 days of the date of the insurable or indemnifiable event (net of any amount so added back in any prior period to the extent not so reimbursed within the applicable 365-day period), shall be excluded,

(n) any noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, *Compensation—Stock Compensation*, shall be excluded, and

(o) the following items shall be excluded:

(i) any net unrealized gain or loss (after any offset) resulting in such period from Hedging Obligations and the application of Accounting Standards Codification Topic No. 815, *Derivatives and Hedging*,

(ii) any net unrealized gain or loss (after any offset) resulting in such period from currency translation gains or losses including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from Hedging Obligations for currency exchange risk) and any other foreign currency translation gains and losses, to the extent such gain or losses are non-cash items,

(iii) any adjustments resulting for the application of Accounting Standards Codification Topic No. 460, *Guarantees*, or any comparable regulation,

(iv) effects of adjustments to accruals and reserves during a prior period relating to any change in the methodology of calculating reserves for returns, rebates and other chargebacks, and

(v) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received from business interruption insurance and reimbursements of any expenses and charges that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Indenture.

Notwithstanding the foregoing, for the purpose of Section 4.07 hereof only (other than Section 4.07(a)(C)(4) hereof), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by Parent and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from Parent and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by Parent or any of its Restricted Subsidiaries, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case

only to the extent such amounts increase the amount of Restricted Payments permitted under such covenant pursuant to Section 4.07(a)(C)(4) hereof.

“**Consolidated Secured Debt Ratio**” as of any date of determination means, the ratio of (a) Consolidated Total Indebtedness that is secured by Liens on the property of Parent and its Restricted Subsidiaries as of such date *minus* Cash Equivalents included on the consolidated balance sheet of Parent as of such date in an aggregate amount not to exceed \$75.0 million to (b) EBITDA of Parent for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur, in each case with such pro forma adjustments to Consolidated Total Indebtedness and EBITDA as are appropriate and consistent with the pro forma adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio.

“**Consolidated Total Indebtedness**” means, as at any date of determination, an amount equal to the sum of (a) the aggregate amount of all outstanding Indebtedness of Parent and its Restricted Subsidiaries on a consolidated basis consisting of Indebtedness for borrowed money, Obligations in respect of Capitalized Lease Obligations and debt obligations evidenced by promissory notes and similar instruments, as determined in accordance with GAAP (excluding for the avoidance of doubt all undrawn amounts under revolving credit facilities and all obligations relating to Qualified Securitization Facilities) and (b) the aggregate amount of all outstanding Disqualified Stock of Parent and all Preferred Stock of its Restricted Subsidiaries on a consolidated basis, with the amount of such Disqualified Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences and maximum fixed repurchase prices, in each case determined on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of repurchase or purchase accounting in connection with the Transactions or any acquisition); *provided*, that Consolidated Total Indebtedness shall not include Indebtedness in respect of (A) any letter of credit, except to the extent of unreimbursed amounts under standby letters of credit and (B) Hedging Obligations existing on the Issue Date or otherwise permitted by Section 4.09(b)(x) hereof. For purposes hereof, the “**maximum fixed repurchase price**” of any Disqualified Stock or Preferred Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock as if such Disqualified Stock or Preferred Stock were purchased on any date on which Consolidated Total Indebtedness shall be required to be determined pursuant to this Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by Parent. The U.S. Dollar Equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the U.S. Dollar Equivalent principal amount of such Indebtedness.

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“**primary obligations**”) of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(b) to advance or supply funds,

(i) for the purchase or payment of any such primary obligation; or

(ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“Controlled Investment Affiliate” means, as to any Person, any other Person which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in Parent and/or other companies.

“Corporate Trust Office” means the office of the Trustee at which at any time its corporate trust business related to this Indenture shall be administered, which office at the date hereof is 60 Livingston Avenue, St. Paul, Minnesota 55107, Attention: Corporate Trust Services, or such other address as the Trustee may designate from time to time by notice to the Holders and the Issuer, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Issuer).

“Credit Facilities” means, with respect to Parent or any of its Restricted Subsidiaries, one or more debt facilities, including the Senior Secured Credit Facilities, or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof, in whole or in part, and any indentures or credit facilities or commercial paper facilities that replace, refund, supplement or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding, supplemental or refinancing facility, arrangement or indenture that increases the amount permitted to be borrowed or issued thereunder or alters the maturity thereof (*provided* that such increase in borrowings or issuances is permitted under Section 4.09 hereof) or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, trustee, lender or group of lenders or other holders.

“Custodian” means the Trustee, as custodian with respect to the Notes, each in global form, or any successor entity thereto.

“Default” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default; *provided* that any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default will be deemed to be cured if such previous Default is cured prior to becoming an Event of Default.

“Definitive Note” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06(c) hereof, substantially in the form of Exhibit A except that such Note shall not bear the Global Note Legend and shall not have the “Schedule of Exchanges of Interests in the Global Note” attached thereto.

“Depositary” means, with respect to the Notes issuable or issued in whole or in part in global form, any Person specified in Section 2.03 hereof as the Depositary with respect to the Notes, and any and all successors thereto appointed as Depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

“Designated Non-cash Consideration” means the fair market value of non-cash consideration received by Parent or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation, executed by the principal financial officer of Parent, less the amount of Cash Equivalents received in connection with a subsequent sale,

redemption or repurchase of or collection or payment on such Designated Non-cash Consideration.

“Designated Preferred Stock” means Preferred Stock of Parent (other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by Parent or any of its Subsidiaries and other than to the extent the proceeds thereof constitute Excluded Contributions) and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate executed by the principal financial officer of Parent on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in Section 4.07(a)(C) hereof.

“Disqualified Stock” means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is putable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely as a result of a change of control or asset sale) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than solely as a result of a change of control or asset sale), in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the Notes or the date the Notes are no longer outstanding; *provided*, that if such Capital Stock is issued to any plan for the benefit of employees of Parent or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by Parent or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations; *provided, further*, that any Capital Stock held by any future, current or former employee, director, officer, manager or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members), of Parent, any of its Subsidiaries or any other entity in which Parent or a Restricted Subsidiary has an Investment and is designated in good faith as an *“affiliate”* by the board of directors of Parent (or the compensation committee thereof), in each case pursuant to any stock subscription or shareholders’ agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement shall not constitute Disqualified Stock solely because it may be required to be repurchased by Parent or its Subsidiaries or in order to satisfy applicable statutory or regulatory obligations.

“Domestic Subsidiary” means, with respect to any Person, any Restricted Subsidiary of such Person other than a Foreign Subsidiary.

“EBITDA” means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period

(a) increased (without duplication) by the following, in each case (other than with respect to clauses (i) and (xii)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(i) provision for taxes based on income or profits or capital, including, without limitation, federal, state, franchise and similar taxes and foreign withholding taxes (including any future taxes or other levies which replace or are intended to be in lieu of such taxes and any penalties and interest related to such taxes or arising from tax examinations) and the net tax expense associated with any adjustments made pursuant to clauses (a) through (o) of the definition of “Consolidated Net Income”; *plus*

(ii) Fixed Charges of such Person for such period (including (x) net losses or Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, (y) bank fees and other financing fees and (z) costs of surety bonds in connection with financing activities, plus amounts excluded from Consolidated Interest Expense as set forth in clauses (a)(r) through (z) in the definition thereof); *plus*

(iii) Consolidated Depreciation and Amortization Expense of such Person for such

period; *plus*

(iv) the amount of any restructuring charges or reserves, integration and facilities opening costs or any one-time costs incurred in connection with acquisitions and Investments, project start-up costs and costs related to the closure and/or consolidation of facilities; *provided* that the aggregate amount of all items added back pursuant to this clause (iv) for any period shall not exceed 20% of EBITDA for such period; *plus*

(v) any other non-cash charges, including any write-offs or write-downs reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (A) Parent may elect not to add back such non-cash charge in the current period and (B) to the extent Parent elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(vi) the amount of any non-controlling interest or minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly-Owned Subsidiary; *plus*

(vii) the amount of "run rate" cost savings, operating expense reductions and synergies projected by Parent in good faith to result from actions taken or committed to be taken no later than twelve (12) months after the end of such period (calculated on a pro forma basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period for which EBITDA is being determined and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such actions; *provided*, that such cost savings and synergies are reasonably identifiable and factually supportable (it is understood and agreed that "run-rate" means the full recurring benefit for a period that is associated with any action taken or committed to be taken, net of the amount of actual benefits realized during such period from such actions); *plus*

(viii) the amount of loss on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Facility; *plus*

(ix) any costs or expense incurred by Parent or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of Parent or net cash proceeds of an issuance of Equity Interest of Parent (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation set forth in Section 4.07(a)(C) hereof; *plus*

(x) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of EBITDA pursuant to clause (b) below for any previous period and not added back; *plus*

(xi) any net loss from disposed, abandoned or discontinued operations; *plus*

(xii) interest income or investment earnings or retiree medical and intellectual

property, royalty or license receivables;

(b) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

(i) non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period and any non-cash gains with respect to cash actually received in a prior period so long as such cash did not increase EBITDA in such prior period; *plus*

(ii) any net income from disposed, abandoned or discontinued operations.

“**EMU**” means economic and monetary union as contemplated in the Treaty on European Union.

“**Equity Interests**” means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

“**Equity Offering**” means any public or private sale or issuance of common stock or Preferred Stock of Parent (excluding Disqualified Stock), other than:

(a) public offerings with respect to Parent’s common stock registered on Form S-4 or Form S-8;

(b) issuances to any Subsidiary of Parent; and

(c) any such public or private sale or issuance that constitutes an Excluded Contribution.

“**euro**” means the single currency of participating member states of the EMU.

“**Euroclear**” means Euroclear Bank S.A./N.V., as operator of the Euroclear system, or any successor securities clearing agency.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Exchange Notes**” means the Notes issued in an Exchange Offer pursuant to Section 2.06(f) hereof.

“**Exchange Offer**” has the meaning set forth in the applicable Registration Rights Agreement.

“**Exchange Offer Registration Statement**” has the meaning set forth in the applicable Registration Rights Agreement.

“**Excluded Contribution**” means net cash proceeds, marketable securities or Qualified Proceeds received by Parent after the Issue Date from

(a) contributions to its common equity capital; and

(b) the sale (other than to a Subsidiary of Parent or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of Parent) of Equity Interests (other than Disqualified Stock and Designated Preferred Stock) of Parent,

in each case designated as Excluded Contributions pursuant to an Officer's Certificate executed by the principal financial officer of Parent on the date such capital contributions are made or the date such Equity Interests are sold, as the case may be, which are excluded from the calculation set forth in Section 4.07(a)(C) hereof.

"Existing Notes" means the \$250,000,000 in aggregate principal amount of the 8.25% senior notes due 2018 issued pursuant to the Existing Notes Indenture and outstanding on the Issue Date.

"Existing Notes Indenture" means the Indenture for the Existing Notes, dated as of March 24, 2010, between Parent, the Issuer, the other guarantors party thereto and U.S. Bank National Association, as trustee, as in effect on the Issue Date and as amended, modified or supplemented from time to time.

"fair market value" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by Parent in good faith.

"Fixed Charge Coverage Ratio" means, with respect to any Person for any period, the ratio of EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that Parent or any Restricted Subsidiary incurs, assumes, guarantees, redeems, repays, retires or extinguishes any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes) or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the **"Fixed Charge Coverage Ratio Calculation Date"**), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, consolidations and discontinued operations (as determined in accordance with GAAP) that have been made by Parent or any of its Restricted Subsidiaries during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, consolidations and discontinued operations (and the change in any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into Parent or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation or discontinued operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, merger, consolidation or discontinued operation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to an Investment, acquisition, disposition, merger, consolidation or discontinued operation (including the Transactions), the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of Parent (and may include, for the avoidance of doubt, cost savings, synergies and operating expense reductions resulting from such Investment, acquisition, merger or consolidation (including the Transactions) which is being given *pro forma* effect that have been or are expected to be realized based on actions taken, committed to be taken or expected in good faith to be taken in connection with an acquisition or disposition within 18 months). If any Indebtedness bears a floating rate

of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of Parent to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as Parent may designate.

“**Fixed Charges**” means, with respect to any Person for any period, the sum of, without duplication:

- (a) Consolidated Interest Expense of such Person for such period;
- (b) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock of such Person and its Restricted Subsidiaries on a consolidated basis during such period; and
- (c) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock of such Person and its Restricted Subsidiaries on a consolidated basis during such period.

“**Foreign Subsidiary**” means, with respect to any Person, any Restricted Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof and any Restricted Subsidiary of such Foreign Subsidiary.

“**GAAP**” means (1) generally accepted accounting principles in the United States of America which are in effect on the Issue Date or (2) if elected by Parent by written notice to the Trustee in connection with the delivery of financial statements and information, the accounting standards and interpretations (“**IFRS**”) adopted by the International Accounting Standard Board, as in effect on the first date of the period for which Parent is making such election; *provided*, that (a) any such election once made shall be irrevocable, (b) all financial statements and reports required to be provided, after such election pursuant to this Indenture shall be prepared on the basis of IFRS, (c) from and after such election, all ratios, computations and other determinations based on GAAP contained in this Indenture shall be computed in conformity with IFRS, (d) in connection with the delivery of financial statements (x) for any of its first three financial quarters of any financial year, it shall restate its consolidated interim financial statements for such interim financial period and the comparable period in the prior year to the extent previously prepared in accordance with GAAP as in effect on the Issue Date and (y) for delivery of audited annual financial information, it shall provide consolidated historical financial statements prepared in accordance with IFRS for the prior most recent fiscal year to the extent previously prepared in accordance with GAAP as in effect on the Issue Date.

“**Global Note Legend**” means the legend set forth in Section 2.06(g)(ii) hereof, which is required to be placed on all Global Notes issued under this Indenture.

“**Global Notes**” means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A, issued in accordance with Section 2.01, 2.06(b), 2.06(d) or 2.06(f) hereof.

“**guarantee**” means a guarantee (other than by endorsement of negotiable instruments for collection in the

ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“**Guarantee**” means the guarantee by any Guarantor of the Issuer’s Obligations under this Indenture and the Notes.

“**Guarantor**” means Parent and each Subsidiary of Parent, if any, that is listed as a Guarantor on the signature page to this Indenture or that provides a Guarantee after the Issue Date in accordance with the terms of this Indenture.

“**Hedging Obligations**” means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate, currency or commodity risks either generally or under specific contingencies.

“**Holder**” means the Person in whose name a Note is registered on the Registrar’s books.

“**Immediate Family Members**” means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

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

(a) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(i) in respect of borrowed money;

(ii) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof);

(iii) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations), except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business and (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and not paid after becoming due and payable; or

(iv) representing the net obligations under any Hedging Obligations,

if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(b) to the extent not otherwise included, any obligation by such Person to be liable for, or to

pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (a) of a third Person (whether or not such items would appear upon the balance sheet of the such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(c) to the extent not otherwise included, the obligations of the type referred to in clause (a) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person;

provided, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (a) Contingent Obligations incurred in the ordinary course of business or (b) obligations under or in respect of Qualified Securitization Facilities; *provided, further*, that Indebtedness shall be calculated without giving effect to the effects of Financial Accounting Standards Board Accounting Standards Codification 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

“**Indenture**” means this Indenture, as amended, supplemented or otherwise modified from time to time.

“**Independent Financial Advisor**” means an accounting, appraisal or investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing that is, in the good faith judgment of Parent, qualified to perform the task for which it has been engaged.

“**Indirect Participant**” means a Person who holds a beneficial interest in a Global Note through a Participant.

“**Initial Notes**” has the meaning set forth in the recitals hereto.

“**Initial Purchasers**” means Morgan Stanley & Co. LLC, Citigroup Global Markets Inc., RBC Capital Markets LLC and Deutsche Bank Securities Inc.

“**Interest Payment Date**” means February 1 and August 1 of each year.

“**Investment Grade Rating**” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or if the applicable securities are not then rated by Moody’s or S&P an equivalent rating by any other Rating Agency.

“**Investment Grade Securities**” means:

(a) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(b) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among Parent and its Subsidiaries;

(c) investments in any fund that invests exclusively in investments of the type described in clauses (a) and (b) which fund may also hold immaterial amounts of cash pending investment or distribution; and

(d) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

“Investments” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, managers and consultants, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of Parent in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of “Unrestricted Subsidiary” and Section 4.07 hereof:

(a) “Investments” shall include the portion (proportionate to Parent’s equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of Parent at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, Parent shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to:

(i) Parent’s “Investment” in such Subsidiary at the time of such redesignation; less

(ii) the portion (proportionate to Parent’s Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(b) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by Parent or a Restricted Subsidiary in respect of such Investment.

“Issue Date” means January 31, 2012.

“Issue Date Acquisition Agreement” means the Business Sale and Purchase Agreement, dated December 20, 2011, by and between GlaxoSmithKline LLC, GlaxoSmithKline plc, certain other parties thereto and Parent relating to the acquisition of 15 brands by Parent and its Subsidiaries.

“Issuer” means Prestige Brands, Inc., a Delaware corporation, and its successors.

“Issuer’s Order” means a written request or order signed on behalf of the Issuer by an Officer of the Issuer, who must be the principal executive officer, the principal financial officer, the treasurer, the secretary or the principal accounting officer of the Issuer, and delivered to the Trustee.

“Legal Holiday” means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment. If a payment date is on a Legal Holiday, payment will be made on the next succeeding day that is not a Legal Holiday and no interest shall accrue for the intervening period.

“Letter of Transmittal” means the letter of transmittal to be prepared by the Issuer and sent to all Holders for use by such Holders in connection with an Exchange Offer.

“Lien” means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not

filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided*, that in no event shall an operating lease be deemed to constitute a Lien.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“**Net Income**” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

“**Net Proceeds**” means the aggregate cash proceeds received by Parent or any of its Restricted Subsidiaries in respect of any Asset Sale, including any cash received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, and brokerage and sales commissions, any relocation expenses incurred as a result thereof, other fees and expenses, including title and recordation expenses, taxes paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Indenture (after taking into account any available tax credits or deductions and any tax sharing arrangements), amounts required to be applied to the repayment of principal, premium, if any, and interest on Senior Indebtedness or amounts required to be applied to the repayment of Indebtedness secured by a Lien on such assets and required (other than required by Section 4.10(b)(i) hereof) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by Parent or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by Parent or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

“**Non-U.S. Person**” means a Person who is not a U.S. Person.

“**Notes**” means the Initial Notes and more particularly means any Note authenticated and delivered under this Indenture. Unless the context requires otherwise, all references to “*Notes*” for all purposes of this Indenture shall include any Additional Notes that are actually issued. The Initial Notes and any Additional Notes subsequently issued under this Indenture will be treated as a single class for all purposes under this Indenture, including waivers, amendments, redemptions and offers to purchase, except for certain waivers and amendments as set forth herein.

“**Obligations**” means any principal, interest (including any interest accruing on or subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker’s acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness; *provided*, that any of the foregoing (other than principal and interest) shall no longer constitute “Obligations” after payment in full of such principal and interest except to the extent such obligations are fully liquidated and non-contingent on or prior to such payment in full.

“**Offering Memorandum**” means the confidential offering memorandum, dated January 24, 2012, relating to the sale of the Initial Notes.

“**Officer**” means the Chairman of the board of directors, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of Parent or the Issuer, as applicable.

“**Officer’s Certificate**” means a certificate signed on behalf of a Person by an Officer of such Person that meets the requirements set forth in this Indenture.

“**Opinion of Counsel**” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to Parent or the Trustee that meets the requirements set forth herein.

“**Parent**” means Prestige Brands Holdings, Inc., and any successor thereto.

“**Participant**” means, with respect to the Depository, a Person who has an account with the Depository (and, with respect to DTC, shall include Euroclear and Clearstream).

“**Participating Broker-Dealer**” has the meaning set forth in the applicable Registration Rights Agreement.

“**Permitted Asset Swap**” means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and Cash Equivalents between Parent or any of its Restricted Subsidiaries and another Person; *provided*, that any Cash Equivalents received must be applied in accordance with Section 4.10 hereof.

“**Permitted Investments**” means:

(a) any Investment in Parent or any of its Restricted Subsidiaries;

(b) any Investment in Cash Equivalents or Investment Grade Securities;

(c) any Investment by Parent or any of its Restricted Subsidiaries in a Person (including, to the extent constituting an Investment, in assets of a Person that represent substantially all of its assets or a division, business unit or product line, including research and development and related assets in respect of any product) that is engaged directly or through entities that will be Restricted Subsidiaries in a Similar Business if as a result of such Investment:

(i) such Person becomes a Restricted Subsidiary; or

(ii) such Person, in one transaction or a series of related transactions, merged or consolidated with or into, or transfers or conveys substantially all of its assets (or such division, business unit or product line), or is liquidated into, Parent or a Restricted Subsidiary,

and, in each case, any Investment held by such Person; *provided*, that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;

(d) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made pursuant to Section 4.10 hereof or any other disposition of assets not constituting an Asset Sale;

(e) any Investment existing on the Issue Date or made pursuant to binding commitments in effect on the Issue Date or an Investment consisting of any extension, modification or renewal of any such Investment or binding commitment existing on the Issue Date; *provided*, that the amount of any such Investment may be increased in such extension, modification or renewal only (i) as required by the terms of such Investment or binding commitment as in existence on the Issue Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (ii) as

otherwise permitted under this Indenture;

(f) any Investment acquired by Parent or any of its Restricted Subsidiaries:

(i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business;

(ii) in exchange for any other Investment or accounts receivable, endorsements for collection or deposit held by Parent or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable (including any trade creditor or customer); or

(iii) in satisfaction of judgments against other Persons; or

(iv) as a result of a foreclosure by Parent or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(g) Hedging Obligations permitted under Section 4.09(b)(x) hereof;

(h) any Investment in a Similar Business taken together with all other Investments made pursuant to this clause (h) that are at that time outstanding not to exceed the greater of (i) \$40.0 million and (ii) 2.00% of Total Assets (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(i) Investments the payment for which consists of Equity Interests (other than Disqualified Stock) of Parent; *provided*, that such Equity Interests will not increase the amount available for Restricted Payments under Section 4.07(a)(C) hereof;

(j) guarantees of Indebtedness permitted under Section 4.09 hereof, performance guarantees and Contingent Obligations incurred in the ordinary course of business and the creation of liens on the assets of Parent or any Restricted Subsidiary in compliance with Section 4.12 hereof;

(k) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 4.11(b) hereof (except transactions described in clauses (ii), (v) and (ix) of Section 4.11(b) hereof;

(l) Investments consisting of purchases or other acquisitions of inventory, supplies, material or equipment or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(m) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (m) that are at that time outstanding (without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash or marketable securities), not to exceed the greater of (i) \$50.0 million and (ii) 2.50% of Total Assets (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(n) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of Parent are necessary or advisable to effect any Qualified Securitization Facility or any repurchase obligation in connection therewith;

(o) advances to, or guarantees of Indebtedness of, employees not in excess of \$10.0 million outstanding in the aggregate;

(p) loans and advances to employees, directors, officers, managers or consultants (i) for business-related travel expenses, moving expenses and other similar expenses or payroll advances, in each case incurred in the ordinary course of business or consistent with past practices or (ii) to fund such Person's purchase of Equity Interests of Parent;

(q) advances, loans or extensions of trade credit in the ordinary course of business by Parent or any of its Restricted Subsidiaries;

(r) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;

(s) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business;

(t) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business;

(u) repurchases of Notes;

(v) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection of deposit and Article 4 customary trade arrangements with customers consistent with past practices; and

(w) Investments consisting of promissory notes issued by the Issuer or any Guarantor to future, present or former officers, directors and employees, members of management or consultants of Parent or any of its Subsidiaries or their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of Parent, to the extent the applicable Restricted Payment is a permitted by Section 4.07 hereof.

"Permitted Liens" means, with respect to any Person:

(a) pledges, deposits or security by such Person under workmen's compensation laws, unemployment insurance, employers' health tax, and other social security laws or similar legislation or other insurance- related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business;

(b) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's, repairmen's and mechanics' Liens, in each case for sums not yet overdue for a period of more than 30 days or being contested in good faith by appropriate actions or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(c) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or not yet payable or subject to penalties for nonpayment or which are being contested in good faith by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(d) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers acceptances issued, and completion guarantees provided for, in each case, issued pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice prior to the Issue Date;

(e) minor survey exceptions, minor encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects and irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person and exceptions on title policies insuring liens granted on Mortgaged Properties (as defined in the Senior Secured Credit Facilities);

(f) Liens securing Obligations relating to any Indebtedness permitted to be incurred pursuant to clause (iv), (xii)(B) or (xiii) of Section 4.09(b) hereof; *provided*, that (a) Liens securing Obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to clause (xiii) relate only to Obligations relating to Refinancing Indebtedness that (x) is secured by Liens on the same assets as the assets securing the Refinancing Indebtedness or (y) extends, replaces, refunds, refinances, renews or defeases Indebtedness incurred or Disqualified Stock or Preferred Stock issued under clause (iii), (iv), (x), (xii) or (xiii) of Section 4.09(b) hereof, and (b) Liens securing Obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock to be incurred pursuant to Section 4.09(b)(iv) hereof extend only to the assets so purchased, leased or improved;

(g) Liens existing on the Issue Date (including to secure any Refinancing Indebtedness of any Indebtedness secured by such Liens);

(h) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary; *provided*, that such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; *provided, further*, that such Liens may not extend to any other property or other assets owned by Parent or any of its Restricted Subsidiaries;

(i) Liens on property or other assets at the time Parent or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into Parent or any of its Restricted Subsidiaries; *provided*, that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, merger or consolidation; *provided, further*, that the Liens may not extend to any other property owned by Parent or any of its

Restricted Subsidiaries;

- (j) Liens securing Obligations relating to any Indebtedness or other obligations of a Restricted Subsidiary owing to Parent or another Restricted Subsidiary permitted to be incurred in accordance with Section 4.09 hereof;
- (k) Liens securing (x) Hedging Obligations and (y) obligations in respect of Bank Products;
- (l) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's accounts payable or similar trade obligations in respect of bankers' acceptances or trade letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (m) leases, sub-leases, licenses or sub-licenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of Parent or any of its Restricted Subsidiaries and do not secure any Indebtedness;
- (n) Liens arising from Uniform Commercial Code (or equivalent statute) financing statement filings regarding operating leases or consignments entered into by Parent and its Restricted Subsidiaries in the ordinary course of business or purported Liens evidenced by the filing of precautionary Uniform Commercial Code financing statements or similar public filings;
- (o) Liens in favor of the Issuer or any Guarantor;
- (p) Liens on equipment of Parent or any of its Restricted Subsidiaries granted in the ordinary course of business to Parent's clients;
- (q) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility;
- (r) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (f), (g), (h) and (i); *provided*, that (i) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property) and proceeds and products thereof, and (ii) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (f), (g), (h) and (i) at the time the original Lien became a Permitted Lien under this Indenture, and (B) an amount necessary to pay any fees and expenses (including original issue discount, upfront fees or similar fees) and premiums (including tender premiums and accrued and unpaid interest), related to such modification, refinancing, refunding, extension, renewal or replacement;
- (s) deposits made or other security provided in the ordinary course of business to secure liability to insurance carriers;
- (t) Liens securing obligations in an aggregate principal amount outstanding which does not exceed the greater of (i) \$25.0 million and (ii) 1.25% of Total Assets (in each case, determined as of the date of such incurrence);
- (u) security given to a public utility or any municipality or governmental authority when

required by such utility or authority in connection with the operations of that Person in the ordinary course of business;

(v) Liens securing judgments for the payment of money not constituting an Event of Default under Section 6.01(a)(v) hereof so long as such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

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

(x) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking institutions arising as a matter of law or under general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(y) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 4.09 hereof; *provided*, that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(z) Liens encumbering reasonable customary deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(aa) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of Parent or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Parent and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of Parent or any of its Restricted Subsidiaries in the ordinary course of business;

(bb) Liens securing obligations owed by Parent or any Restricted Subsidiary in respect of the Existing Notes;

(cc) any encumbrance or restriction (including put and call arrangements) with respect to capital stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(dd) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale or purchase of goods entered into by Parent or any Restricted Subsidiary in the ordinary course of business;

(ee) Liens solely on any cash earnest money deposits made by Parent or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted by this Indenture;

(ff) ground leases in respect of real property on which facilities owned or leased by Parent or any of its Subsidiaries are located;

(gg) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(hh) Liens on Capital Stock of an Unrestricted Subsidiary that secure Indebtedness or other obligations of such Unrestricted Subsidiary;

(ii) Liens on the assets of Restricted Subsidiaries that are not the Issuer or a Guarantor securing Indebtedness of such Subsidiaries that were permitted by the terms of this Indenture to be incurred;

(jj) Liens on cash advances in favor of the seller of any property to be acquired in an Investment permitted under this Indenture to be applied against the purchase price for such Investment;

(kk) any interest or title of a lessor, sub-lessor, licensor or sub-licensor or secured by a lessor's, sub-lessor's, licensor's or sub-licensor's interest under leases or licenses entered into by Parent or any of the Restricted Subsidiaries in the ordinary course of business; and

(ll) deposits of cash with the owner or lessor of premises leased and operated by Parent or any of its Subsidiaries in the ordinary course of business of Parent and such Subsidiary to secure the performance of Parent's or such Subsidiary's obligations under the terms of the lease for such premises.

For purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness.

"**Person**" means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"**Preferred Stock**" means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

"**Private Placement Legend**" means the legend set forth in Section 2.06(g)(i) hereof to be placed on all Notes issued under this Indenture, except where otherwise permitted by the provisions of this Indenture.

"**QIB**" means a "qualified institutional buyer" as defined in Rule 144A.

"**Qualified Proceeds**" means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

"**Qualified Securitization Facility**" means any Securitization Facility (a) constituting a securitization financing facility that meets the following conditions: (i) the board of directors of Parent shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to Parent and the applicable Securitization Subsidiary, (ii) all sales and/or contributions of Securitization Assets and related assets to the applicable Securitization Subsidiary are made at fair market value (as determined in good faith by Parent) and (iii) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by Parent) or (b) constituting a receivables financing facility.

"**Rating Agencies**" means Moody's and S&P or if Moody's or S&P or both shall not make a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by Parent which shall be substituted for Moody's or S&P or both, as the case may be.

“**Record Date**” for the interest payable on any applicable Interest Payment Date means the January 15 and July 15 (whether or not a Business Day) immediately preceding such Interest Payment Date.

“**Registration Rights Agreement**” means a registration rights agreement with respect to the Notes dated as of the Issue Date, among the Issuer, the Guarantors and the Initial Purchasers, as such agreement may be amended, modified or supplemented from time to time and, with respect to any Additional Notes, one or more registration rights agreements between the Issuer and the other parties thereto (if any), as such agreement(s) may be amended, modified or supplemented from time to time, relating to rights given by the Issuer to the purchasers of Additional Notes to register such Additional Notes under the Securities Act.

“**Regulation S**” means Regulation S promulgated under the Securities Act.

“**Regulation S Global Note**” means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as applicable.

“**Regulation S Permanent Global Note**” means a permanent Global Note in the form of Exhibit A bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depository or its nominee, issued in a denomination equal to the outstanding principal amount of the Regulation S Temporary Global Note upon expiration of the applicable Restricted Period.

“**Regulation S Temporary Global Note**” means a temporary Global Note in the form of Exhibit A bearing the Global Note Legend and the Private Placement Legend and the Regulation S Temporary Global Note Legend and deposited with or on behalf of, and registered in the name of, the Depository or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903.

“**Regulation S Temporary Global Note Legend**” means the legend set forth in Section 2.06(g)(iii) hereof.

“**Related Business Assets**” means assets (other than Cash Equivalents) used or useful in a Similar Business, *provided* that any assets received by Parent or a Restricted Subsidiary in exchange for assets transferred by Parent or a Restricted Subsidiary shall not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

“**Responsible Officer**” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

“**Restricted Definitive Note**” means a Definitive Note bearing, or that is required to bear, the Private Placement Legend.

“**Restricted Global Note**” means a Global Note bearing, or that is required to bear, the Private Placement Legend.

“**Restricted Investment**” means an Investment other than a Permitted Investment.

“**Restricted Period**” means, in respect of any Note issued under Regulation S, the 40-day distribution compliance period as defined in Regulation S applicable to such Note.

“**Restricted Subsidiary**” means, at any time, any direct or indirect Subsidiary of Parent (including the Issuer) that is not then an Unrestricted Subsidiary; *provided*, that upon an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of “Restricted Subsidiary.”

“**Rule 144**” means Rule 144 promulgated under the Securities Act.

“**Rule 144A**” means Rule 144A promulgated under the Securities Act.

“**Rule 903**” means Rule 903 promulgated under the Securities Act.

“**Rule 904**” means Rule 904 promulgated under the Securities Act.

“**S&P**” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

“**Sale and Lease-Back Transaction**” means any arrangement providing for the leasing by Parent or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by Parent or such Restricted Subsidiary to a third Person in contemplation of such leasing.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Secured Indebtedness**” means any Indebtedness of Parent or any of its Restricted Subsidiaries secured by a Lien.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Securitization Assets**” means the accounts receivable, royalty or other revenue streams and other rights to payment and any other assets related thereto subject to a Qualified Securitization Facility and the proceeds thereof.

“**Securitization Facility**” means any of one or more receivables or securitization financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the Obligations of which are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to Parent or any of its Restricted Subsidiaries (other than a Securitization Subsidiary) pursuant to which Parent or any of its Restricted Subsidiaries sells or grants a security interest in its accounts receivable or Securitization Assets or assets related thereto to either (a) a Person that is not a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

“**Securitization Fees**” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

“**Securitization Subsidiary**” means any Subsidiary formed for the purpose of, and that solely engages in one or more Qualified Securitization Facilities and other activities reasonably related thereto.

“**Senior Indebtedness**” means:

- (a) all Indebtedness of the Issuer or any Guarantor outstanding under the Senior Secured

Credit Facilities, the Existing Notes and the Notes and Guarantees (including interest accruing on or after the filing of any petition in bankruptcy or similar proceeding or for reorganization of the Issuer or any Guarantor (at the rate provided for in the documentation with respect thereto, regardless of whether or not a claim for post-filing interest is allowed in such proceedings)), and any and all other fees, expense reimbursement obligations, indemnification amounts, penalties, and other amounts (whether existing on the Issue Date or thereafter created or incurred) and all obligations of the Issuer or any Guarantor to reimburse any bank or other Person in respect of amounts paid under letters of credit, acceptances or other similar instruments;

(b) all (x) Hedging Obligations (and guarantees thereof) and (y) obligations in respect of Bank Products (and guarantees thereof) owing to a lender under the Senior Secured Credit Facilities or any Affiliate of such lender (or any Person that was a lender or an Affiliate of such lender at the time the applicable agreement giving rise to such Hedging Obligation was entered into); *provided*, that such Hedging Obligations and obligations in respect of Bank Products, as the case may be, are permitted to be incurred under the terms of this Indenture;

(c) any other Indebtedness of the Issuer or any Guarantor permitted to be incurred under the terms of this Indenture, unless the instrument under which such Indebtedness is incurred expressly provides that it is subordinated in right of payment to the Notes or any Guarantee; and

(d) all Obligations with respect to the items listed in the preceding clauses (a), (b) and (c); *provided*, that Senior Indebtedness shall not include:

(i) any obligation of such Person to Parent or any of its Subsidiaries;

(ii) any liability for federal, state, local or other taxes owed or owing by such Person;

(iii) any accounts payable or other liability to trade creditors arising in the ordinary course of business;

(iv) any Indebtedness or other Obligation of such Person which is subordinate or junior in any respect to any other Indebtedness or other Obligation of such Person; or

(v) that portion of any Indebtedness which at the time of incurrence is incurred in violation of this Indenture.

“**Senior Secured Credit Facilities**” means the ABL Facility and the Term Loan Facility.

“**Shelf Registration Statement**” means a Shelf Registration Statement as defined in the applicable Registration Rights Agreement.

“**Significant Subsidiary**” means any Restricted Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date.

“**Similar Business**” means (a) any business conducted by Parent or any of its Restricted Subsidiaries on the Issue Date, and any reasonable extension thereof, or (b) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to, or a reasonable extension, development or expansion of, the businesses in which Parent and its Restricted Subsidiaries are engaged on the Issue Date.

“**Subordinated Indebtedness**” means,

- (a) any Indebtedness of the Issuer which is by its terms subordinated in right of payment to the Notes, and
- (b) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Notes.

“**Subsidiary**” means, with respect to any Person:

(a) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.0% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof or is consolidated under GAAP with such Person at such time; and

(b) any partnership, joint venture, limited liability company or similar entity of which

(i) more than 50.0% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(ii) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

“**Supplemental Acquisition Agreement**” means the Business Sale and Purchase Agreement, dated December 20, 2011, by and between GlaxoSmithKline LLC, GlaxoSmithKline plc, certain other parties thereto and Parent relating to the acquisition of two brands by Parent and its Subsidiaries.

“**Term Loan Facility**” means the credit facility provided under the Term Loan Credit Agreement dated as of the Issue Date among Parent, the Issuer, the lenders party thereto from time to time in their capacities as lenders thereunder, and Citibank, N.A., as administrative agent and collateral agent and the other parties thereto, or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, replacements, renewals, restatements, refundings or refinancings thereof and any one or more indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that extend, replace, refund, refinance, renew or defease any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

“**Total Assets**” means the total assets of Parent and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the most recent available balance sheet of Parent or such other Person as may be expressly stated, determined on a pro forma basis to include any asset directly or indirectly acquired or disposed of by Parent and its Restricted Subsidiaries on or prior to the date of determination.

“**Transaction Expenses**” means any fees or expenses incurred or paid by Parent or any Restricted Subsidiary in connection with the Transactions, including payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options.

“**Transactions**” means the Acquisition and the transactions contemplated by the Acquisition Agreements, the repayment and refinancing of certain Indebtedness, the incurrence of Liens securing the Existing Notes, the issuance of the Notes and borrowings under the Senior Secured Credit Facilities on the Issue Date, the payment of transactions fees and expenses and other transactions in connection therewith or incidental thereto.

“**Treasury Rate**” means, as of any Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available on the Business Day immediately preceding the date that the applicable notice of redemption is provided by the Issuer with respect to the Notes to be redeemed on such Redemption Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the Redemption Date to February 1, 2016; *provided*, that if the period from the Redemption Date to such date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-77bbb).

“**Trustee**” means U.S. Bank National Association, as trustee, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

“**Uniform Commercial Code**” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York.

“**Unrestricted Definitive Note**” means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

“**Unrestricted Global Note**” means a permanent Global Note, substantially in the form of Exhibit A that bears the Global Note Legend and that has the “Schedule of Exchanges of Interests in the Global Note” attached thereto, and that is deposited with or on behalf of and registered in the name of the Depository, representing Notes that do not bear the Private Placement Legend.

“**Unrestricted Subsidiary**” means:

- (a) any Subsidiary of Parent which at the time of determination is an Unrestricted Subsidiary (as designated by Parent, as provided below); and
- (b) any Subsidiary of an Unrestricted Subsidiary.

Parent may designate any Subsidiary of Parent (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) other than the Issuer to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, Parent or any Subsidiary of Parent (other than solely any Subsidiary of the Subsidiary to be so designated); *provided*, that:

- (i) any Unrestricted Subsidiary must be an entity of which the Equity Interests entitled to cast at least a majority of the votes that may be cast by all Equity Interests having ordinary voting power for the election of directors or Persons performing a similar function are owned, directly or indirectly, by

Parent;

(ii) such designation complies with Section 4.07 hereof; and

(iii) each of (A) the Subsidiary to be so designated and (B) its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of Parent or any Restricted Subsidiary.

Parent may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided*, that, immediately after giving effect to such designation, no Default shall have occurred and be continuing and either:

(a) Parent could incur any Indebtedness deemed Incurred by the designation of such Unrestricted Subsidiary as a Restricted Subsidiary; or

(b) the Fixed Charge Coverage Ratio for Parent and its Restricted Subsidiaries would be equal to or greater than such ratio for Parent and its Restricted Subsidiaries immediately prior to such designation, in each case on a *pro forma* basis taking into account such designation.

Any such designation by Parent shall be notified by Parent to the Trustee by promptly filing with the Trustee a copy of the resolution of the board of directors of Parent or any committee thereof giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"U.S. Dollar Equivalent" means with respect to any monetary amount in a currency other than U.S. dollars, at any time for determination thereof, the amount of U.S. dollars obtained by converting such foreign currency involved in such computation into U.S. dollars at the spot rate for the purchase of U.S. dollars with the applicable foreign currency as published in The Wall Street Journal in the "Exchange Rates" column under the heading "Currency Trading" on the date two Business Days prior to such determination.

"U.S. Government Securities" means securities that are:

(a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such U.S. Government Securities or a specific payment of principal of or interest on any such U.S. Government Securities held by such custodian for the account of the holder of such depository receipt; *provided*, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Securities or the specific payment of principal of or interest on the U.S. Government Securities evidenced by such depository receipt.

"U.S. Person" means a U.S. person as defined in Rule 902(k) under the Securities Act.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(a) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment; by

(b) the sum of all such payments;

provided, that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being extended, replaced, refunded, refinanced, renewed or defeased (the **“Applicable Indebtedness”**), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable extension, replacement, refunding, refinancing, renewal or defeasance shall be disregarded.

“Wholly-Owned Subsidiary” of any Person means a Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors’ qualifying shares and shares issued to foreign nationals as required by applicable law) shall at the time be owned by such Person and/or by one or more Wholly-Owned Subsidiaries of such Person.

Section 1.02. *Other Definitions.*

Term	Defined in Section
“Acceptable Commitment”	4.1
“Affiliate Transaction”	4.11
“Asset Sale Offer”	4.1
“Authentication Order”	2.02
“Change of Control Offer”	4.14
“Change of Control Payment”	4.14
“Change of Control Payment Date”	4.14
“Covenant Defeasance”	8.03
“Covenant Suspension Event”	4.16
“DTC”	2.03
“Event of Default”	6.01
“Excess Proceeds”	4.1
“Fixed Charge Coverage Test”	4.07
“incur” and “incurrence”	4.09
“Legal Defeasance”	8.02
“Note Register”	2.03
“Offer Amount”	3.09
“Offer Period”	3.09
“Pari Passu Indebtedness”	4.1
“Paying Agent”	2.03
“Purchase Date”	3.09
“Redemption Date”	3.01
“Refinancing Indebtedness”	4.09
“Refunding Capital Stock”	4.07
“Registrar”	2.03
“Restricted Payments”	4.07
“Reversion Date”	4.16
“Second Commitment”	4.1
“Successor Company”	5.01
“Successor Person”	5.01
“Suspended Covenants”	4.16
“Suspension Date”	4.16
“Suspension Period”	4.16
“Transfer Agent”	2.03
“Treasury Capital Stock”	4.07

Section 1.03. *Incorporation by Reference of Trust Indenture Act.* At all times after the effectiveness of a registration statement under the Registration Rights Agreement, this Indenture will be subject to the mandatory provisions of the Trust Indenture Act, which unless otherwise indicated are incorporated by reference in and made a part of this Indenture effective upon the effectiveness of any such registration statement. Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture.

The following Trust Indenture Act terms if used in this Indenture have the following meanings:

“indenture securities” means the Notes and the Guarantees;

“indenture security Holder” means a Holder of a Note;

“indenture to be qualified” means this Indenture;

“indenture trustee” or “institutional trustee” means the Trustee; and “obligor” on the Notes and the Guarantees means the Issuer and the Guarantors, respectively, and any successor obligor upon the Notes and the Guarantees, respectively.

All other terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by SEC rule under the Trust Indenture Act have the meanings so assigned to them.

Section 1.04. Rules of Construction. Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “or” is not exclusive;
- (d) the words “including,” “includes” and similar words shall be deemed to be followed by “without limitation”;
- (e) words in the singular include the plural, and in the plural include the singular;
- (f) “will” shall be interpreted to express a command;
- (g) provisions apply to successive events and transactions;
- (h) references to sections of, or rules under, the Securities Act or the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;
- (i) unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Indenture;
- (j) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision;
- (k) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the Issuer dated such date prepared in accordance with GAAP;
- (l) words used herein implying any gender shall apply to both genders;
- (m) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including”;

(n) the principal amount of any Preferred Stock at any time shall be (i) the maximum liquidation value of such Preferred Stock at such time or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock at such time, whichever is greater; and

(o) all references to any interest or other amount payable on or with respect to the Notes shall be deemed to include any Additional Interest.

Section 1.05. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and (subject to Section 7.01 hereof) conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section 1.05.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Note.

(e) The Issuer may, in the circumstances permitted by the Trust Indenture Act, set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Issuer prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date shall be the later of 10 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this Section 1.05(f) shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including DTC, that is a Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken

by Holders, and any Person, that is a Holder of a Global Note, including DTC, may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such Depository's standing instructions and customary practices.

(h) The Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by DTC entitled under the procedures of such Depository to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 120 days after such record date.

ARTICLE 2 THE NOTES

Section 2.01. *Form and Dating; Terms.*

(a) *General.* The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be issued in minimum denominations of \$2,000 and any integral multiples of \$1,000 in excess of \$2,000.

(b) *Global Notes.* Notes issued in global form shall be substantially in the form of Exhibit A hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified in the "Schedule of Exchanges of Interests in the Global Note" attached thereto and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) *Temporary Global Notes.* Notes offered and sold in reliance on Regulation S shall be issued initially in the form of the Regulation S Temporary Global Note, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Custodian and registered in the name of the Depository or the nominee of the Depository for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided.

Following (i) the termination of the applicable Restricted Period and (ii) the receipt by the Trustee of (A) a certification or other evidence in a form reasonably acceptable to the Issuer of non-United States beneficial ownership of 100% of the aggregate principal amount of each Regulation S Temporary Global Note (except to the extent of any beneficial owners thereof who acquired an interest therein during the Restricted Period pursuant to another exemption from registration under the Securities Act and who shall take delivery of a beneficial ownership interest in a 144A Global Note bearing a Private Placement Legend, all as contemplated by Section 2.06(b) hereof) and (B) an Officer's Certificate from the Issuer, the Trustee shall remove the Regulation S Temporary Global Note Legend from the Regulation S Temporary Global Note, following which temporary beneficial interests in the Regulation S Temporary Global Note shall automatically become beneficial interests in the Regulation S Permanent

Global Note pursuant to the Applicable Procedures.

The aggregate principal amount of a Regulation S Temporary Global Note and a Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

(d) *Terms.* The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuer, the Guarantors from time to time party hereto and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

The Notes shall be subject to repurchase by the Issuer pursuant to an Asset Sale Offer as provided in Section 4.10 hereof or a Change of Control Offer as provided in Section 4.14 hereof. The Notes shall not be redeemable, other than as provided in Article 3 hereof.

Additional Notes ranking *pari passu* with the Initial Notes may be created and issued from time to time by the Issuer without notice to or consent of the Holders and shall be consolidated with and form a single class with the Initial Notes and shall have the same terms as to status, redemption or otherwise as the Initial Notes except that interest may accrue on the Additional Notes from their date of issuance (or such other date specified by the Issuer); *provided*, that the Issuer's ability to issue Additional Notes shall be subject to the Issuer's compliance with Section 4.09 hereof. Any Additional Notes may be issued with the benefit of an indenture supplemental to this Indenture.

(e) *Euroclear and Clearstream Applicable Procedures.* The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Notes that are held by Participants through Euroclear or Clearstream.

Section 2.02. Execution and Authentication. At least one Officer of the Issuer shall execute the Notes on behalf of the Issuer by manual, facsimile or electronic (including ".pdf") signature.

If an Officer of the Issuer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall nevertheless be valid.

A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form of Exhibit A, by the manual signature of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

On the Issue Date, the Trustee shall, upon receipt of an Issuer's Order (an "**Authentication Order**"), authenticate and deliver the Initial Notes in the aggregate principal amount or amounts specified in such Authentication Order. In addition, at any time, from time to time, the Trustee shall, upon receipt of an Authentication Order, authenticate and deliver any Additional Notes or Exchange Notes for an aggregate principal amount specified in such Authentication Order for such Additional Notes or Exchange Notes issued or increased hereunder.

The Trustee may appoint an authenticating agent acceptable to the Issuer to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to

authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Issuer.

Section 2.03. Registrar, Transfer Agent and Paying Agent. The Issuer shall maintain (i) an office or agency where Notes may be presented for registration (“**Registrar**”), (ii) an office or agency where Notes may be presented for transfer or for exchange (“**Transfer Agent**”) and (iii) an office or agency where Notes may be presented for payment (“**Paying Agent**”). The Registrar shall keep a register of the Notes (“**Note Register**”) and of their transfer and exchange. The registered Holder of a Note will be treated as the owner of such Note for all purposes and only registered Holders shall have rights under this Indenture and the Notes. The Issuer may appoint one or more co-registrars, one or more co-transfer agents and one or more additional paying agents. The term “Registrar” includes any co-registrar, the term “Transfer Agent” includes any co-transfer agent and the term “Paying Agent” includes any additional paying agents. The Issuer may change any Paying Agent, Transfer Agent or Registrar without prior notice to any Holder. The Issuer shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuer fails to appoint or maintain another entity as Registrar, Transfer Agent or Paying Agent, the Trustee shall act as such. The Issuer or any of its Subsidiaries may act as Paying Agent, Transfer Agent or Registrar.

The Issuer initially appoints The Depository Trust Company, its nominees and successors (“**DTC**”) to act as Depository with respect to the Global Notes.

The Issuer initially appoints the Trustee to act as the Paying Agent, Transfer Agent and Registrar for the Notes and to act as Custodian with respect to the Global Notes.

Section 2.04. Paying Agent to Hold Money in Trust. The Issuer shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, interest or Additional Interest, if any, on the Notes, and will notify the Trustee in writing of any default by the Issuer in making any such payment. While any such default continues, the Trustee may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee. The Issuer at any time may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Issuer or a Subsidiary or the Trustee) shall have no further liability for the money. If the Issuer or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05. Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with Section 312(a) of the Trust Indenture Act. If the Trustee is not the Registrar, the Issuer shall furnish to the Trustee at least two Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders and the Issuer shall otherwise comply with Section 312(a) of the Trust Indenture Act.

Section 2.06. Transfer and Exchange.

(a) *Transfer and Exchange of Global Notes.* Except as otherwise set forth in this Section 2.06, a Global Note may be transferred, in whole and not in part, only to another nominee of the Depository or to a successor thereto or a nominee of such successor thereto. A beneficial interest in a Global Note may not be exchanged for a Definitive Note unless, and, if applicable, subject to the limitation on issuance of Definitive Notes set forth in Section 2.06(c)(ii), (i) the Depository (x) notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Note or (y) has ceased to be a clearing agency registered under the Exchange Act, and, in either case, a successor Depository is not appointed by the Issuer within 120 days, (ii) the Issuer, at its option, notifies the Trustee in writing that it elects to cause the issuance of Definitive Notes (although Regulation S Temporary Global Notes may not be exchanged for Definitive Notes prior to (A) the expiration of the applicable Restricted Period and (B) the receipt by the Registrar of any certification of beneficial ownership required pursuant

to Rule 903(b)(3)(ii)(B)) or (iii) upon the request of a Holder if there shall have occurred and be continuing an Event of Default with respect to the Notes and the Trustee has received a written request from the Depository to issue Definitive Notes. Upon the occurrence of any of the events described in clause (i), (ii) or (iii) above, Definitive Notes delivered in exchange for any Global Note or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository (in accordance with its customary procedures). Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Sections 2.07 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note, except for Definitive Notes issued subsequent to any of the events described in clause (i), (ii) or (iii) above and pursuant to Section 2.06(c) hereof. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a); *provided, however*, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b), (c) or (f) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes.* The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depository in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) *Transfer of Beneficial Interests in the Same Global Note.* Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; *provided*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person other than pursuant to Rule 144A. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(i).

(ii) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes.* In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(i) hereof, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depository to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above; *provided*, that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in a Regulation S Temporary Global Note prior to (x) the expiration of the applicable Restricted Period therefor and (y) the receipt by the Registrar of any certification of beneficial ownership required pursuant to Rule 903(b)(3)(ii)(B). Upon consummation of an Exchange Offer by the Issuer in accordance with Section 2.06(f) hereof, the requirements of this Section 2.06(b)(ii) shall be deemed to have been satisfied upon receipt by the Registrar of the instructions contained in the applicable Letter of Transmittal or in an Agent's Message delivered by the Holder of such beneficial interests in the Restricted Global Notes. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(h) hereof.

(iii) *Transfer of Beneficial Interests to Another Restricted Global Note.* A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(ii) hereof and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in a 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof; or

(B) if the transferee will take delivery in the form of a beneficial interest in a Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof.

(iv) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note.* A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(ii) hereof and:

(A) such exchange or transfer is effected pursuant to an Exchange Offer in accordance with the applicable Registration Rights Agreement and the holder of the beneficial interest to be transferred, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Participating Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Issuer;

(B) such Notes are sold or exchanged pursuant to an effective registration statement under the Securities Act;

(C) such transfer is effected by a Participating Broker-Dealer pursuant to an Exchange Offer Registration Statement in accordance with the applicable Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Issuer so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (B) or (D) above at a time when an Unrestricted Global Note has not yet been issued, the Issuer shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (B) or (D) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) *Transfer or Exchange of Beneficial Interests for Definitive Notes.*

(i) *Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes.* If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon the occurrence of any of the events described in clause (i), (ii) or (iii) of Section 2.06(a) hereof and receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Issuer or any of its Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Issuer shall execute and the Trustee shall authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depository and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(i) (except transfers pursuant to clause (F) above) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) *Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes.* Notwithstanding Sections 2.06(c)(i)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the applicable Restricted Period therefor and (B) the receipt by the Registrar of any certifications of beneficial ownership required pursuant to Rule 903(b)(3)(ii) (B), except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(iii) *Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes.* A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only upon the occurrence of any of the events described in clause (i), (ii) or (iii) of Section 2.06(a) hereof and if:

(A) such exchange or transfer is effected pursuant to an Exchange Offer in accordance with the applicable Registration Rights Agreement and the holder of such beneficial interest, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Participating Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Issuer;

(B) such transfer is effected pursuant to a Shelf Registration Statement in accordance with the applicable Registration Rights Agreement;

(C) such transfer is effected by a Participating Broker-Dealer pursuant to an Exchange Offer Registration Statement in accordance with the applicable Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Issuer so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iv) *Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes.* If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon the occurrence of any of the events described in clause (i), (ii) or (iii) of Section 2.06(a) hereof and satisfaction of the conditions set forth in Section 2.06(b)(ii) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Issuer shall execute and the Trustee shall authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to

this Section 2.06(c)(iv) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from or through the Depository and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall not bear the Private Placement Legend.-

(d) *Transfer and Exchange of Definitive Notes for Beneficial Interests.*

(i) *Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes.* If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to the Issuer or any of its Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cancel the Restricted Definitive Note and increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the applicable Restricted Global Note, in the case of clause (B) above, the applicable 144A Global Note, and in the case of clause (C) above, the applicable Regulation S Global Note.

(ii) *Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

(A) such exchange or transfer is effected pursuant to an Exchange Offer in accordance with the applicable Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Participating Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is

an affiliate (as defined in Rule 144) of the Issuer;

(B) such transfer is effected pursuant to a Shelf Registration Statement in accordance with the applicable Registration Rights Agreement;

(C) such transfer is effected by a Participating Broker-Dealer pursuant to an Exchange Offer Registration Statement in accordance with the applicable Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(2) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Issuer so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the applicable conditions of this Section 2.06(d)(ii), the Trustee shall cancel the Restricted Definitive Note and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) *Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraph (ii)(B), (ii)(D) or (iii) above at a time when an Unrestricted Global Note has not yet been issued, the Issuer shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) *Transfer and Exchange of Definitive Notes for Definitive Notes.* Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer or exchange in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e):

(i) *Restricted Definitive Notes to Restricted Definitive Notes.* Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made to a QIB in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; or

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications required by item (3) thereof, if applicable.

(ii) *Restricted Definitive Notes to Unrestricted Definitive Notes.* Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

(A) such exchange or transfer is effected pursuant to an Exchange Offer in accordance with the applicable Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Participating Broker-Dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Issuer;

(B) any such transfer is effected pursuant to a Shelf Registration Statement in accordance with the applicable Registration Rights Agreement;

(C) any such transfer is effected by a Participating Broker-Dealer pursuant to an Exchange Offer Registration Statement in accordance with the applicable Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Issuer so requests, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) *Unrestricted Definitive Notes to Unrestricted Definitive Notes.* A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) *Exchange Offer.* Upon the occurrence of an Exchange Offer in accordance with the applicable Registration Rights Agreement, the Issuer shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate (i) one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of the beneficial interests in the Restricted Global Notes tendered for acceptance by Persons that certify in the applicable Letters of Transmittal or in an Agent's Message that (x) they are not Participating Broker-Dealers, (y) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of the Issuer, and accepted for exchange in an Exchange Offer and (ii) Unrestricted Definitive Notes in an aggregate principal amount equal to the principal amount of the Restricted Definitive Notes tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Participating Broker-Dealers, (y) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of the Issuer, and accepted for exchange in an Exchange Offer. Concurrently with the issuance of such Notes, the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Notes to be reduced accordingly, and the Issuer shall execute and the Trustee shall authenticate and mail to the Persons designated by the Holders of Definitive Notes so accepted Unrestricted Definitive Notes in the applicable principal amount. Any Notes that remain outstanding after the consummation of an Exchange Offer, and Exchange Notes issued in connection with such Exchange Offer, shall be treated as a single class of securities under this Indenture.

(g) *Legends.* The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

(i) *Private Placement Legend.*

(A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT OR (C) IT IS AN ACCREDITED INVESTOR (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER-DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS

SECURITY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS SECURITY), (D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUER SO REQUESTS), OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY, IF THE PROPOSED TRANSFEREE IS AN ACCREDITED INVESTOR, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(iv), (c)(iii), (c)(iv), (d)(ii), (d)(iii), (e)(ii), (e)(iii) or (f) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(ii) *Global Note Legend.* Each Global Note shall bear a legend in substantially the following form (with appropriate changes in the last sentence if DTC is not the Depository):

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06(h) OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUER. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC") TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME

OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

BY ACCEPTING THIS NOTE EACH HOLDER AND EACH TRANSFEREE IS DEEMED TO REPRESENT AND AGREE THAT AT THE TIME OF ITS ACQUISITION AND THROUGHOUT THE PERIOD THAT IT HOLDS THIS NOTE (I) IT IS NOT, AND IS NOT ACTING ON BEHALF OF, A PLAN (WHICH TERM INCLUDES (A) EMPLOYEE BENEFIT PLANS THAT ARE SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), (B) PLANS, INDIVIDUAL RETIREMENT ACCOUNTS AND OTHER ARRANGEMENTS THAT ARE SUBJECT TO SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), AND (C) ENTITIES THE UNDERLYING ASSETS OF WHICH ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY PLANS DESCRIBED ABOVE IN CLAUSE (A) OR (B), OR (II) ITS PURCHASE AND HOLDING OF THIS NOTE OR ANY INTEREST THEREIN (AND THE EXCHANGE OF THIS NOTE FOR AN EXCHANGE NOTE) SHALL NOT RESULT IN A NON-EXEMPT PROHIBITED TRANSACTION UNDER ERISA OR SECTION 4975 OF THE CODE."

(iii) *Regulation S Temporary Global Note Legend.* The Regulation S Temporary Global Note shall bear a legend in substantially the following form:

"THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION ORIGINALLY EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE TRANSFERRED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON EXCEPT PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS. TERMS USED ABOVE HAVE THE MEANINGS GIVEN TO THEM IN REGULATION S UNDER THE SECURITIES ACT. BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT."

(h) *Cancellation and/or Adjustment of Global Notes.* At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or cancelled in whole and not in part, each such Global Note shall be returned to or retained and cancelled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(i) *General Provisions Relating to Transfers and Exchanges.*

(i) To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(ii) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.07, 2.10, 3.06, 3.09, 4.10, 4.14, and 9.05 hereof).

(iii) Neither the Registrar nor the Issuer shall be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the mailing of a notice of redemption of the Notes to be redeemed under Section 3.03 hereof and ending at the close of business on the day of such mailing, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part, (C) to register the transfer or exchange of a Note between a Record Date and the next succeeding Interest Payment Date or (D) to register the transfer or exchange of any Notes tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer or an Asset Sale Offer.

(iv) Neither the Registrar nor the Issuer shall be required to register the transfer or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; *provided*, that new Notes will only be issued in denominations of \$2,000 and integral multiples of \$1,000 in excess of \$2,000.

(v) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuer shall deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuer shall be affected by notice to the contrary.

(vii) Upon surrender for registration of transfer of any Note at the office or agency of the Issuer designated pursuant to Section 4.02 hereof, the Issuer shall execute, and the Trustee shall authenticate and mail, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(viii) At the option of the Holder, subject to Section 2.06(a) hereof, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes or Definitive Notes are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and mail, the replacement Global Notes and Definitive Notes which the Holder making the exchange is entitled to in accordance with the provisions of Section 2.02 hereof.

(ix) All certifications, certificates and Opinions of Counsel required to be submitted pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

Section 2.07. Replacement Notes. If either (x) any mutilated Note is surrendered to the Trustee, the Registrar or the Issuer, or (y) the Issuer and the Trustee receive evidence to their satisfaction of the ownership and destruction, loss or theft of any Note, then the Issuer shall issue and the Trustee, upon receipt of an Authentication Order and satisfaction of any other requirements of the Trustee, shall authenticate a replacement Note. If required by the Trustee or the Issuer, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of both (i) the Trustee to protect the Trustee and (ii) the Issuer to protect the Issuer, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuer and the Trustee may charge the Holder for their expenses in replacing a Note.

Every replacement Note is a contractual obligation of the Issuer and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08. Outstanding Notes. The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Issuer or a Guarantor or an Affiliate of the Issuer or a Guarantor holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser (as defined in Section 8-303 of the Uniform Commercial Code).

Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture shall not be deemed to be outstanding for purposes hereof.

If the principal amount of any Note is considered paid under Section 4.01 hereof, such Note shall cease to be outstanding and interest thereon shall cease to accrue.

If the Paying Agent (other than the Issuer or a Guarantor or an Affiliate of the Issuer or a Guarantor) holds, on a Redemption Date or maturity date, money sufficient to pay Notes (or portions thereof) payable on that date, then on and after that date such Notes (or portions thereof) shall be deemed to be no longer outstanding (including for accounting purposes) and shall cease to accrue interest on and after such date.

Section 2.09. Treasury Notes. In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuer or by any Affiliate of the Issuer, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to such pledged Notes and that the pledgee is not the Issuer or a Guarantor or any Affiliate of the Issuer or a Guarantor.

Section 2.10. Temporary Notes. Until certificates representing Notes are ready for delivery, the Issuer may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate definitive Notes in exchange for temporary Notes.

Holder and beneficial holders, as the case may be, of temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial holders, respectively, of Notes under this Indenture.

Section 2.11. Cancellation. The Issuer at any time may deliver Notes to the Trustee for cancellation.

The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose of such cancelled Notes in its customary manner. Certification of the cancellation of all cancelled Notes shall be delivered to the Issuer upon its written request therefor. The Issuer may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12. Defaulted Interest. If the Issuer defaults in a payment of interest on the Notes, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Issuer shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed any such special record date and payment date; *provided*, that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Trustee shall promptly notify the Issuer of any such special record date. At least 15 days before any such special record date, the Issuer (or, upon the written request of the Issuer, the Trustee in the name and at the expense of the Issuer) shall mail or cause to be mailed, first-class postage prepaid, or otherwise deliver in accordance with the Applicable Procedures, to each Holder, with a copy to the Trustee, a notice at his or her address as it appears in the Note Register that states the special record date, the related payment date and the amount of such interest to be paid.

Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 2.13. CUSIP Numbers; ISINs. The Issuer in issuing the Notes may use CUSIP numbers and ISINs (in each case, if then generally in use) and, if so, the Trustee shall use CUSIP numbers and ISINs in notices of redemption or exchange as a convenience to Holders; *provided*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption or exchange and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will as promptly as practicable notify the Trustee in writing of any change in the CUSIP numbers and ISINs.

ARTICLE 3 REDEMPTION

Section 3.01. Notices to Trustee. If the Issuer elects to redeem Notes pursuant to Section 3.07 hereof, it shall furnish to the Trustee, at least two Business Days (unless a shorter notice shall be agreed to by the Trustee) before notice of redemption is required to be delivered or mailed to Holders pursuant to Section 3.03 hereof, an Officer's Certificate setting forth (a) the paragraph or subparagraph of such Note and/or Section of this Indenture pursuant to which the redemption shall occur, (b) the date of redemption (the "**Redemption Date**"), (c) the principal amount of the Notes to be redeemed and (d) the redemption price.

Section 3.02. Selection of Notes to Be Redeemed. Subject to DTC requirements, if less than all of the Notes are to be redeemed at any time, the Trustee shall select the Notes to be redeemed (a) if the Notes are listed on an exchange, in compliance with the requirements of such exchange or (b) on a pro rata basis to the extent practicable, or, if the pro rata basis is not practicable for any reason, by lot or by such other method as the Trustee shall deem fair and appropriate and otherwise in accordance with the Applicable Procedures. In the event of partial redemption by lot, the particular Notes to be redeemed shall be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the Redemption Date by the Trustee from the outstanding Notes not

previously called for redemption.

The Trustee shall promptly notify the Issuer in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. No Notes of \$2,000 or less can be redeemed in part, except that if all of the Notes of a Holder are to be redeemed, the entire outstanding amount of Notes held by such Holder shall be redeemed or purchased, even if not in a principal amount of at least \$2,000. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

Section 3.03. Notice of Redemption. Subject to Section 3.09 hereof, the Issuer shall deliver electronically, mail or cause to be mailed by first-class mail, postage prepaid, notices of redemption at least 30 days but not more than 60 days before the Redemption Date to each Holder of Notes to be redeemed at such Holder's registered address stated in the Note Register or otherwise in accordance with the Applicable Procedures, except that redemption notices may be delivered or mailed more than 60 days prior to a Redemption Date if the notice is issued in connection with Article 8 or Article 11 hereof. Notices of redemption may, at the Issuer's discretion, be conditional.

The notice shall identify the Notes to be redeemed and shall state:

- (a) the Redemption Date;
- (b) the redemption price;
- (c) if any Definitive Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, after the Redemption Date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note representing the same indebtedness to the extent not redeemed will be issued in the name of the Holder upon cancellation of the original Note; *provided*, that new Notes will only be issued in denominations of \$2,000 and integral multiples of \$1,000 in excess of \$2,000;
- (d) the name and address of the Paying Agent;
- (e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (f) that, unless the Issuer defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the Redemption Date;
- (g) the paragraph or subparagraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;
- (h) the CUSIP number and ISIN, if any, printed on the Notes being redeemed and that no representation is made as to the correctness or accuracy of any such CUSIP number and ISIN that is listed in such notice or printed on the Notes; and
- (i) any condition to such redemption.

At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's name and at its expense; *provided*, that the Issuer shall have delivered to the Trustee, at least two Business Days before notice of redemption is required to be delivered, mailed or caused to be mailed to Holders pursuant to this Section 3.03

(unless a shorter notice shall be agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

If the Notes are listed on an exchange, for so long as the Notes are so listed and the rules of such exchange so require, the Issuer will notify the exchange of any such redemption and, if applicable, of the principal amount of any Notes outstanding following any partial redemption of Notes.

Section 3.04. Effect of Notice of Redemption. A notice of redemption, if delivered, mailed or caused to be mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to deliver such notice or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05 hereof, on and after the Redemption Date, interest shall cease to accrue on Notes or portions of Notes called for redemption.

Section 3.05. Deposit of Redemption Price.

(a) Prior to 11:00 a.m. (New York City time) on the Redemption Date, the Issuer shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption price of and accrued and unpaid interest on all Notes to be redeemed on that Redemption Date. The Trustee or the Paying Agent shall promptly return to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed.

(b) If the Issuer complies with the provisions of the preceding paragraph (a), on and after the Redemption Date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption. If a Note is redeemed on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to the Redemption Date shall be paid to the Person in whose name such Note was registered at the close of business on such Record Date. If any Note called for redemption shall not be paid upon surrender for redemption because of the failure of the Issuer to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the Redemption Date until such principal is paid, and to the extent lawful on any interest accrued to the Redemption Date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06. Notes Redeemed in Part. Upon surrender of a Definitive Note that is redeemed in part, the Issuer shall issue and the Trustee shall authenticate for the Holder at the expense of the Issuer a new Note equal in principal amount to the unredeemed portion of the Note surrendered representing the same indebtedness to the extent not redeemed; *provided*, that each new Note will be in a principal amount of \$2,000 and any integral multiple of \$1,000 in excess of \$2,000. It is understood that, notwithstanding anything to the contrary in this Indenture, only an Authentication Order and not an Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate such new Note.

Section 3.07. Optional Redemption.

(a) At any time prior to February 1, 2016, the Issuer may on one or more occasions redeem all or a part of the Notes, upon notice in accordance with Section 3.03 hereof, at a redemption price equal to the sum of (i) 100.0% of the principal amount of the Notes redeemed, plus (ii) the Applicable Premium as of the Redemption Date, plus (iii) accrued and unpaid interest, if any, to the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(b) On and after February 1, 2016, the Issuer may redeem the Notes, in whole or in part, upon notice in accordance with Section 3.03 hereof at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest, if any, thereon to the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the

relevant Interest Payment Date, if redeemed during the twelve-month period beginning on February 1 of each of the years indicated below:

Year	Percentage
2016	104.063%
2017	102.031%
2018 and thereafter	100%

(c) Until February 1, 2015, the Issuer may, at its option, and on one or more occasions, redeem up to 35.0% of the aggregate principal amount of Notes issued under this Indenture at a redemption price equal to 108.125% of the aggregate principal amount of the Notes, plus accrued and unpaid interest, if any, to the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, with the net cash proceeds received by it from one or more Equity Offerings or a contribution to the Issuer's common equity capital made with the net cash proceeds of a concurrent Equity Offering; *provided*, that (A) at least 65% of the aggregate principal amount of Notes originally issued under this Indenture on the Issue Date and any Additional Notes issued under this Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption; and (B) each such redemption occurs within 180 days of the date of closing of each such Equity Offering.

In addition to any redemption pursuant to this Section 3.07, Parent or any of its Subsidiaries may at any time and from time to time purchase Notes in the open market or otherwise.

(d) Except pursuant to any of clauses (a) through (c) of this Section 3.07 and as set forth in the Notes, the Notes will not be redeemable at the Issuer's option prior to February 1, 2016.

(e) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof. Notice of any redemption, whether in connection with an Equity Offering or otherwise, may be given prior to the completion thereof, and any such redemption or notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering. If any Notes are listed on an exchange, and the rules of such exchange so require, the Issuer shall notify the exchange of any such notice of redemption. In addition, the Issuer shall notify the exchange of the principal amount of any Notes outstanding following any partial redemption of such Notes.

(f) The Trustee shall have no duty to calculate or verify the calculation of the Applicable Premium.

Section 3.08. Mandatory Redemption. The Issuer shall not be required to make any mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09. Offers to Repurchase by Application of Excess Proceeds.

(a) In the event that, pursuant to Section 4.10 hereof, the Issuer shall be required to commence an Asset Sale Offer, it shall follow the procedures specified below.

(b) The Asset Sale Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "**Offer Period**"). No later than five Business Days after the termination of the Offer Period (the "**Purchase Date**"), the Issuer shall apply all Excess Proceeds (the "**Offer Amount**") to the purchase of Notes and, if required, Pari Passu Indebtedness (on a pro rata basis, if applicable, with adjustments as necessary so that no Notes or Pari Passu Indebtedness will be repurchased in part in an unauthorized denomination), or, if less than the Offer Amount has

been tendered, all Notes and Pari Passu Indebtedness tendered in response to the Asset Sale Offer. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

(c) If the Purchase Date is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest, up to but excluding the Purchase Date, shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

(d) Upon the commencement of an Asset Sale Offer, the Issuer shall deliver electronically or send, by first-class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The Asset Sale Offer shall be made to all Holders and holders of such Pari Passu Indebtedness. The notice, which shall govern the terms of the Asset Sale Offer, shall state:

(i) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 hereof and the length of time the Asset Sale Offer shall remain open;

(ii) the Offer Amount, the purchase price and the Purchase Date;

(iii) that any Note not tendered or accepted for payment shall continue to accrue interest;

(iv) that, unless the Issuer defaults in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest on and after the Purchase Date;

(v) that any Holder electing to have less than all of the aggregate principal amount of its Notes purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in an amount not less than \$2,000 and in integral multiples of \$1,000 in excess thereof;

(vi) that Holders electing to have a Note purchased pursuant to any Asset Sale Offer shall be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" attached to the Note completed, or transfer such Note by book-entry transfer, to the Issuer, the Depositary, if appointed by the Issuer, or a Paying Agent at the address specified in the notice at least two Business Days before the Purchase Date;

(vii) that Holders shall be entitled to withdraw their election if the Issuer, the Depositary or the Paying Agent, as the case may be, receives, not later than the close of business on the second Business Day prior to the expiration date of the Offer Period, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(viii) that, if the aggregate principal amount of Notes and Pari Passu Indebtedness surrendered by the holders thereof exceeds the Offer Amount, the Trustee shall, through the facilities of the Depositary (in the case of Global Notes) select the Notes and the Issuer shall select such Pari Passu Indebtedness to be purchased on a pro rata basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered (with such adjustments as may be deemed appropriate by the Trustee so that only Notes in an amount not less than \$2,000 or integral multiples of \$1,000 in excess thereof are purchased); and

(ix) that Holders whose certificated Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by

book-entry transfer) representing the same indebtedness to the extent not repurchased; *provided*, that new Notes will only be issued in denominations of \$2,000 and integral multiples of \$1,000 in excess of \$2,000.

(e) On or before the Purchase Date, the Issuer shall, to the extent lawful, (1) accept for payment, on a pro rata basis as described in clause (d)(viii) of this Section 3.09, the Offer Amount of Notes or portions thereof validly tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered and (2) deliver or cause to be delivered to the Trustee the Notes properly accepted, together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof so tendered.

(f) The Issuer, the Depository or the Paying Agent, as the case may be, shall promptly mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes properly tendered by such Holder and accepted by the Issuer for purchase, and the Issuer shall promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver (or cause to be transferred by book-entry) such new Note to such Holder (it being understood that, notwithstanding anything in this Indenture to the contrary, no Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate and mail or deliver such new Note) in a principal amount equal to any unpurchased portion of the Note surrendered representing the same indebtedness to the extent not repurchased. Any Note not so accepted shall be promptly mailed or delivered by the Issuer to the Holder thereof. The Issuer shall publicly announce the results of the Asset Sale Offer on or as soon as practicable after the Purchase Date.

(g) Prior to 11:00 a.m. (New York City time) on the purchase date, the Issuer shall deposit with the Trustee or with the Paying Agent money sufficient to pay the purchase price of and accrued and unpaid interest on all Notes to be purchased on that purchase date. The Trustee or the Paying Agent shall promptly return to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the purchase price of, and accrued and unpaid interest on, all Notes to be redeemed.

Other than as specifically provided in this Section 3.09 or Section 4.10 hereof, any purchase pursuant to this Section 3.09 shall be made pursuant to the applicable provisions of Sections 3.01 through 3.06 hereof, and references therein to "redeem," "redemption," "Redemption Date" and similar words shall be deemed to refer to "purchase," "repurchase," "Purchase Date" and similar words, as applicable.

ARTICLE 4 COVENANTS

Section 4.01. *Payment of Notes.* The Issuer shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes and this Indenture. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Issuer or a Guarantor or an Affiliate of the Issuer or a Guarantor, holds as of 11:00 a.m. New York City time on the due date money deposited by the Issuer in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Issuer shall pay all Additional Interest, if any, in the same manner on the dates and in the amounts set forth in the applicable Registration Rights Agreement.

The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; the Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02. *Maintenance of Office or Agency.* The Issuer shall maintain the offices or agencies

(which may be an office of the Trustee or an affiliate of the Trustee, Registrar or Transfer Agent) required under Section 2.03 hereof where Notes may be surrendered for registration of transfer or for exchange or presented for payment and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain such offices or agencies as required by Section 2.03 hereof for such purposes. The Issuer shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuer hereby designates the Corporate Trust Office as one such office or agency of the Issuer in accordance with Section 2.03 hereof.

Section 4.03. Reports and Other Information.

(a) Notwithstanding that Parent may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, the Parent shall file with the SEC:

(i) within 90 days after the end of each fiscal year, annual reports on Form 10-K, or any successor or comparable form, containing the information required to be contained therein, or required in such successor or comparable form;

(ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, reports on Form 10-Q containing all quarterly information that would be required to be contained in Form 10-Q, or any successor or comparable form;

(iii) within five (5) Business Days of the date on which an event would have been required to be reported on a Form 8-K or any successor or comparable form if Parent had been a reporting company under the Exchange Act, a current report relating to such event on Form 8-K or any successor or comparable form;

in each case, in a manner that complies in all material respects with the requirements specified in such form (except as described above or below and subject, in the case of required financial information, to exceptions consistent with the presentation of financial information in the Offering Memorandum, to the extent filed within the times specified above); *provided*, that Parent shall not be so obligated to file such reports with the SEC (A) if the SEC does not permit such filing or (B) prior to the consummation of an exchange offer or the effectiveness of a Shelf Registration Statement as required by the Registration Rights Agreement, in which event Parent shall make available such information to the Trustee, the Holders of the Notes and prospective purchasers of Notes, in each case within 15 days after the time Parent would be required to file such information with the SEC, if it were subject to Sections 13 or 15(d) of the Exchange Act. In addition, to the extent not satisfied by the foregoing, Parent agrees that, for so long as any Notes are outstanding, it will furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act; *provided, further*, that any report required to be delivered under clause (i) or (ii) of this Section 4.03(a) prior to the completion of the first full fiscal year following the Issue Date shall not be required to comply with Regulation S-X or contain all purchase accounting adjustments relating to the Transactions to the extent it is not practicable to include any such adjustments in such report.

(b) Notwithstanding anything herein to the contrary, Parent will not be deemed to have failed to comply with any of its obligations hereunder for purposes of Section 6.01(a)(iii) hereof until 90 days after the receipt of the written notice delivered thereunder.

To the extent any information is not provided within the time periods specified in this Section 4.03 and such information is subsequently provided, Parent will be deemed to have satisfied its obligations with respect thereto at such time and any Default with respect thereto shall be deemed to have been cured.

Section 4.04. *Compliance Certificate.*

(a) Parent shall deliver to the Trustee, within 90 days after the end of each fiscal year ending after the Issue Date, a certificate from its principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of Parent and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether Parent and the Issuer have kept, observed, performed and fulfilled their obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge, on behalf of Parent, Parent and its Restricted Subsidiaries have kept, observed, performed and fulfilled in all material respects each and every condition and covenant contained in this Indenture during such fiscal year and no Default has occurred and is continuing with respect to any of the terms, provisions, covenants and conditions of this Indenture (or, if a Default shall have occurred and is continuing, describing all such Defaults of which he or she may have knowledge and what action Parent is taking or proposes to take with respect thereto).

(b) When any Default has occurred and is continuing under this Indenture, or if the Trustee or the holder of any other evidence of Indebtedness of Parent, the Issuer or any Subsidiary gives any notice or takes any other action with respect to a claimed Default, Parent shall promptly (which shall be no more than ten Business Days after becoming aware of such Default) deliver to the Trustee by registered or certified mail or by facsimile transmission an Officer's Certificate specifying such event and what action Parent proposes to take with respect thereto.

Section 4.05. *Taxes.* Parent shall pay or discharge, and shall cause each of its Restricted Subsidiaries to pay or discharge, prior to delinquency, all material taxes, lawful assessments, and governmental levies except such as are contested in good faith and by appropriate actions or where the failure to effect such payment or discharge is not adverse in any material respect to the Holders.

Section 4.06. *Stay, Extension and Usury Laws.* The Issuer and each of the Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture and the Notes; and the Issuer and each of the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and (to the extent that they may lawfully do so) covenant that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07. *Limitation on Restricted Payments.*

(a) Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any payment or distribution on account of Parent's or any of its Restricted Subsidiaries' Equity Interests (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend, payment or distribution payable in connection with any merger or consolidation other than:

(A) dividends and distributions by Parent payable solely in Equity Interests (other than Disqualified Stock) of Parent; or

(B) dividends and distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, Parent or a Restricted Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities;

(ii) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of Parent, including in connection with any merger or consolidation;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness, other than:

(A) Indebtedness permitted under clauses (vii) and (viii) of Section 4.09(b) hereof; or

(B) the purchase, repurchase or other acquisition of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase or acquisition; or

(iv) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "**Restricted Payments**"), unless, at the time of such Restricted Payment:

(A) no Default shall have occurred and be continuing or would occur as a consequence thereof;

(B) immediately after giving effect to such transaction on a pro forma basis, Parent could incur \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof (the "**Fixed Charge Coverage Test**"); and

(C) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by Parent and its Restricted Subsidiaries after the Issue Date (including, without duplication, Restricted Payments permitted by clauses (i), (vi)(B) and (xii) of Section 4.07(b) hereof, but excluding all other Restricted Payments permitted by Section 4.07(b) hereof), is less than the sum of (without duplication):

(1) 50% of the Consolidated Net Income of Parent for the period (taken as one accounting period) beginning on April 1, 2012 to the end of Parent's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, or, in the case such Consolidated Net Income for such period is a deficit, minus 100.0% of such deficit; *plus*

(2) 100% of the aggregate net cash proceeds and the fair market value of marketable securities or other property received by Parent since immediately after the Issue Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness or

issue Disqualified Stock or Preferred Stock pursuant to Section 4.09(b)(xii)(A) hereof) from the issue or sale of:

(i) Equity Interests of Parent, including Treasury Capital Stock, but excluding cash proceeds and the fair market value of marketable securities or other property received from the sale of:

(x) Equity Interests to any future, present or former employees, directors, officers, managers or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of Parent or any of Parent's Subsidiaries after the Issue Date to the extent such amounts have been applied to Restricted Payments made in accordance with Section 4.07(b)(iv) hereof; and

(y) Designated Preferred Stock; or

(ii) debt securities of Parent that have been converted into or exchanged for such Equity Interests of Parent;

provided, that this clause (C)(2) shall not include the proceeds from (W) Refunding Capital Stock applied in accordance with Section 4.07(b)(ii) hereof, (X) Equity Interests or convertible debt securities of Parent sold to a Restricted Subsidiary, (Y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (Z) Excluded Contributions; plus

(3) 100% of the aggregate amount of cash and the fair market value of marketable securities or other property contributed to the capital of Parent following the Issue Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to Section 4.09(b)(xii)(A) hereof) (other than by a Restricted Subsidiary and other than any Excluded Contributions); *plus*

(4) without duplication of amounts that increased the amount available for Restricted Payments pursuant to clause (vii) or (x) of Section 4.07(b) hereof or the amount available pursuant to clause (h) or (m) of the definition of "Permitted Investments," 100% of the aggregate amount received in cash and the fair market value of marketable securities or other property received by means of:

(i) the sale or other disposition (other than to Parent or a Restricted Subsidiary) of, or other returns on Investments from, Restricted Investments made by Parent or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from Parent or its Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments made by Parent or its Restricted Subsidiaries, in each case after the Issue Date; or

(ii) the sale (other than to Parent or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary or a dividend or distribution from an Unrestricted Subsidiary after the Issue Date; *plus*

(5) without duplication of amounts that increased the amount available for Restricted Payments pursuant to clause (vii) or (x) of Section 4.07(b) hereof or the amount available pursuant to clause (h) or (m) of the definition of "Permitted Investments," in the case of

the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger or consolidation of an Unrestricted Subsidiary into Parent or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to Parent or a Restricted Subsidiary after the Issue Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred) at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, consolidation or transfer of assets; *provided* that, in the case of this clause (5), if the fair market value of such Investment shall exceed \$25.0 million, such fair market value shall be determined by the board of directors of Parent, whose resolution with respect thereto will be delivered to the Trustee), at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary.

(b) The foregoing provisions of Section 4.07(a) hereof shall not prohibit:

(i) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Indenture;

(ii) (A) the redemption, repurchase, retirement or other acquisition of any Equity Interests, including any accrued and unpaid dividends thereon (“**Treasury Capital Stock**”) or Subordinated Indebtedness of Parent or any Restricted Subsidiary, in exchange for, or out of the proceeds of the substantially concurrent sale or issuance (other than to a Restricted Subsidiary) of, Equity Interests of Parent (in each case, other than any Disqualified Stock) (“**Refunding Capital Stock**”), (B) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of Parent or to an employee stock ownership plan or any trust established by Parent or any of its Subsidiaries) of Refunding Capital Stock and (C) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under Section 4.07(b)(vi)(A) hereof, the declaration and payment of dividends on the Refunding Capital Stock in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(iii) the defeasance, redemption, repurchase, exchange or other acquisition or retirement (1) of Subordinated Indebtedness of the Issuer or a Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of the Issuer or a Guarantor or Disqualified Stock of the Issuer or a Guarantor or (2) Disqualified Stock of the Issuer or a Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale of, Disqualified Stock of the Issuer or a Guarantor, that, in each case, is incurred or issued, as applicable, in compliance with Section 4.09 hereof so long as:

(A) the principal amount (or accreted value, if applicable) of such new Indebtedness or the liquidation preference of such new Disqualified Stock does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Subordinated Indebtedness or the liquidation preference of, plus any accrued and unpaid dividends on, the Disqualified Stock being so defeased, redeemed, repurchased, exchanged, acquired or retired for value, plus the amount of any premium (including tender premium) with respect to Subordinated Indebtedness or Disqualified Stock being so defeased, redeemed, repurchased, exchanged, acquired or retired, defeasance costs and any fees and expenses incurred in connection with the issuance of such new Indebtedness or Disqualified Stock;

(B) such new Indebtedness is subordinated to the Notes or the applicable Guarantee at least to the same extent as such Subordinated Indebtedness so defeased, redeemed, repurchased, exchanged, acquired or retired;

(C) such new Indebtedness or Disqualified Stock has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Subordinated Indebtedness or Disqualified Stock being so defeased, redeemed, repurchased, exchanged, acquired or retired (or, if earlier, the date that is 91 days after the maturity date of the Notes); and

(D) such new Indebtedness or Disqualified Stock has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness or Disqualified Stock being so defeased, redeemed, repurchased, exchanged, acquired or retired (or requires no or nominal payments in cash prior to the date that is 91 days after the maturity date of the Notes);

(iv) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of Parent held by any future, present or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members) of Parent or any of its Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any stock subscription or shareholder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by Parent in connection with such repurchase, retirement or other acquisition); *provided*, that the aggregate amount of Restricted Payments made under this clause (iv) do not exceed in any calendar year \$10.0 million (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$20.0 million in any calendar year); *provided, further*, that such amount in any calendar year under this clause may be increased by an amount not to exceed:

(A) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of Parent to any present or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of Parent or any of its Subsidiaries that occurs after the Issue Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of Section 4.07(a)(C) hereof; *plus*

(B) the cash proceeds of key man life insurance policies received by Parent or its Restricted Subsidiaries after the Issue Date; *less*

(C) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (A) and (B) of this clause (iv);

and *provided, further*, that cancellation of Indebtedness owing to Parent from any future, present or former employees, directors, officers, members of management or consultants of Parent (or their respective Controlled Investment Affiliates or Immediate Family Members) or any of Parent's Restricted Subsidiaries in connection with a repurchase of Equity Interests of Parent will not be deemed to constitute a Restricted Payment for purposes of this Section 4.07 or any other provision of this Indenture;

(v) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of Parent or any of its Restricted Subsidiaries or any class or series of Preferred Stock of any Restricted Subsidiary issued in accordance with Section 4.09 hereof to the extent such dividends are included in the definition of "Fixed Charges";

(vi) (A) the declaration and payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by Parent or any of its Restricted Subsidiaries after the Issue Date; or

(B) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to Section 4.07(b)(ii) hereof;

provided, in the case of each of (A) and (B) of this clause (vi), that for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock but is not Designated Preferred Stock, after giving effect to such issuance or declaration on a pro forma basis, Parent and its Restricted Subsidiaries on a consolidated basis would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(vii) Investments in Unrestricted Subsidiaries having an aggregate fair market value taken together with all other Investments made pursuant to this clause (vii) that are at the time outstanding without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of cash or marketable securities (until such proceeds are converted to Cash Equivalents), not to exceed the greater of (a) \$15.0 million and (b) 0.75% of Total Assets at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(viii) payments made or expected to be made by Parent or any Restricted Subsidiary in respect of withholding or similar taxes payable upon exercise of Equity Interests by any future, present or former employee, director, officer, member of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of Parent or any Restricted Subsidiary (including the repurchase of Equity Interests from such Persons to the extent the proceeds are used to make tax payments) and any repurchases of Equity Interests deemed to occur upon exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise price of such options, warrants or similar rights;

(ix) Restricted Payments that are made with Excluded Contributions;

(x) Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (x) (in the case of Restricted Investments, at the time outstanding (without giving effect to the sale of an Investment to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, Cash Equivalents)) not to exceed the greater of (a) \$50.0 million and (b) 2.00% of Total Assets at such time;

(xi) distributions or payments of Securitization Fees;

(xii) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness or Disqualified Stock pursuant to the provisions similar to those in Section 4.10 and Section 4.14 hereof; *provided*, that if the Issuer shall have been required to make a Change of Control Offer or Asset Sale Offer, as applicable, to purchase the Notes on the terms provided in this Indenture applicable to Change of Control Offers or Asset Sale Offers, respectively, all Notes validly tendered by Holders in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed, acquired or retired for value;

(xiii) mandatory redemptions of Disqualified Stock issued as a Restricted Payment or as consideration for a Permitted Investment pursuant to clause (h) or (m) of the definition thereof; *provided* that the amount of such redemptions are no greater than the amount that constituted a Restricted Payment or Permitted Investment; and

(xiv) the distribution, by dividend or otherwise, of shares of Capital Stock of, or Indebtedness

owed to Parent or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, the primary assets of which are cash and/or Cash Equivalents);

provided, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (x), (xiii) and (xiv), no Default shall have occurred and be continuing or would occur as a consequence thereof.

(c) For purposes of determining compliance with this Section 4.07, in the event that a Restricted Payment meets the criteria of more than one of the categories of payments permitted under clauses (i) through (xiv) of Section 4.07(b) hereof, or is permitted pursuant to Section 4.07(a) hereof, Parent shall be entitled to classify such Restricted Payment (or portion thereof) on the date of its payment or later reclassify such Restricted Payment (or portion thereof) in any manner that complies with this Section 4.07.

(d) As of the Issue Date, all of Parent's Domestic Subsidiaries shall be Restricted Subsidiaries. Parent shall not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the penultimate sentence of the definition of "Unrestricted Subsidiary." For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by Parent and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated shall be deemed to be Restricted Payments in an amount determined as set forth in the penultimate sentence of the definition of "Investments." Such designation shall be permitted only if a Restricted Payment in such amount would be permitted at such time, pursuant to this Section 4.07 or pursuant to the definition of "Permitted Investments," and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. Unrestricted Subsidiaries shall not be subject to any of the restrictive covenants set forth in this Indenture. For the avoidance of doubt, this Section 4.07 shall not restrict the making of any "AHYDO catch up payment" with respect to, and required by the terms of, any Indebtedness of Parent or any of its Restricted Subsidiaries permitted to be incurred under the terms of this Indenture.

Section 4.08. *Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.*

(a) Parent shall not, and shall not permit any of its Restricted Subsidiaries that is not the Issuer or a Guarantor to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(i) (A) pay dividends or make any other distributions to Parent or any of its Restricted Subsidiaries that is a Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or (B) pay any Indebtedness owed to Parent or any of its Restricted Subsidiaries that is a Guarantor;

(ii) make loans or advances to Parent or any of its Restricted Subsidiaries that is a Guarantor; or

(iii) sell, lease or transfer any of its properties or assets to Parent or any of its Restricted Subsidiaries that is a Guarantor,

(b) The restrictions in Section 4.08(a) hereof shall not apply to encumbrances or restrictions existing under or by reason of:

(i) contractual encumbrances or restrictions in effect on the Issue Date, including pursuant to the Existing Notes Indenture, the Senior Secured Credit Facilities and the related documentation and Hedging Obligations and the related documentation;

(ii) this Indenture, the Notes and the guarantees thereof;

(iii) purchase money obligations for property acquired in the ordinary course of business and capital lease obligations that impose restrictions of the nature discussed in Section 4.08(a)(iii) hereof on the property so acquired;

(iv) applicable law or any applicable rule, regulation or order;

(v) any agreement or other instrument of a Person acquired by or merged or consolidated with or into Parent or any of its Restricted Subsidiaries in existence at the time of such acquisition or at the time it merges with or into Parent or any of its Restricted Subsidiaries or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired and its Subsidiaries or the property or assets so acquired;

(vi) contracts for the sale of assets, including customary restrictions with respect to a Subsidiary of Parent pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary;

(vii) Secured Indebtedness otherwise permitted to be incurred pursuant to Section 4.09 and Section 4.12 hereof that limit the right of the debtor to dispose of the assets securing such Indebtedness;

(viii) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or arising in connection with any Permitted Liens;

(ix) other Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not the Issuer or Guarantors permitted to be incurred subsequent to the Issue Date pursuant to the provisions of Section 4.09 hereof;

(x) customary provisions in joint venture agreements and other similar agreements relating solely to such joint venture;

(xi) customary provisions contained in leases, sub-leases, licenses, sub-licenses or similar agreements, including with respect to intellectual property and other agreements, in each case, entered into in the ordinary course of business;

(xii) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which Parent or any of its Restricted Subsidiaries is a party entered into in the ordinary course of business; *provided*, that such agreement prohibits the encumbrance of solely the property or assets of Parent or such Restricted Subsidiary that are the subject of such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of Parent or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;

(xiii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of any Restricted Subsidiary;

(xiv) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(xv) restrictions arising in connection with cash or other deposits permitted under Section 4.12

hereof;

(xvi) any agreement or instrument (A) relating to any Indebtedness, Disqualified or Preferred Stock permitted to be incurred or issued subsequent to the Issue Date pursuant to Section 4.09 hereof if the encumbrances and restrictions are not materially more disadvantageous, taken as a whole, to the Holders than is customary in comparable financings for similarly situated issuers (as determined in good faith by Parent) or is otherwise in effect on the Issue Date and (B) either (x) Parent determines that such encumbrance or restriction will not adversely affect the Issuer's ability to make principal and interest payments on the Notes as and when they come due or (y) such encumbrances and restrictions apply only during the continuance of a default in respect of a payment or financial maintenance covenant relating to such Indebtedness;

(xvii) any encumbrances or restrictions of the type referred to in clauses (i), (ii) and (iii) of Section 4.08(a) hereof imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xvi) of this Section 4.08(b); *provided*, that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of Parent, not materially more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and

(xviii) restrictions created in connection with any Qualified Securitization Facility that in the good faith determination of Parent are necessary or advisable to effect such Qualified Securitization Facility.

Section 4.09. *Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.*

(a) Parent shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, "incur" and collectively, an "incurrence") with respect to any Indebtedness (including Acquired Indebtedness) and Parent shall not issue any shares of Disqualified Stock and shall not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; *provided*, that Parent may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio of Parent and its Restricted Subsidiaries for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued would have been at least 2.00 to 1.00, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such four-quarter period; *provided* that the then outstanding aggregate principal amount of Indebtedness (including Acquired Indebtedness), Disqualified Stock and Preferred Stock that may be incurred or issued, as applicable, pursuant to the foregoing by Restricted Subsidiaries that are not the Issuer or Guarantors shall not exceed the greater of (i) \$35.0 million and (ii) 2.00% of Total Assets (in each case, determined on the date of such incurrence).

(b) The provisions of Section 4.09(a) hereof shall not apply to:

(i) Indebtedness incurred pursuant to any Credit Facilities by Parent or any Restricted Subsidiary and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof); *provided* that immediately after giving effect to any such incurrence or issuance, the then-outstanding aggregate

principal amount of all Indebtedness incurred or issued under this clause (i) does not exceed the sum of \$880 million plus the greater of (A) \$50.0 million and (B) the Borrowing Base;

(ii) the incurrence by the Issuer and any Guarantor of Indebtedness represented by the Notes (including any guarantee thereof) and the exchange notes and related exchange guarantees to be issued in exchange for the Notes and the guarantees thereof pursuant to the Registration Rights Agreement (but excluding any Additional Notes);

(iii) Indebtedness of Parent and its Subsidiaries in existence on the Issue Date (other than Indebtedness described in clauses (i) and (ii) of this Section 4.09(b));

(iv) Indebtedness (including Capitalized Lease Obligations), Disqualified Stock incurred or issued by Parent or any Restricted Subsidiary and Preferred Stock incurred or issued by Parent or any Restricted Subsidiary, to finance the purchase, lease or improvement of property (real or personal), equipment or other assets used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount not to exceed the greater of (a) \$30.0 million and (b) 1.50% of Total Assets (in each case, determined at the date of incurrence or issuance), so long as such Indebtedness, Disqualified Stock or Preferred Stock is incurred or issued at the date of such purchase, lease or improvement or within 270 days thereafter;

(v) Indebtedness incurred by Parent or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, warehouse receipts, or similar instruments issued or created in the ordinary course of business, including letters of credit in respect of workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance; *provided*, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 Business Days following such drawing or incurrence;

(vi) Indebtedness arising from agreements of Parent or its Restricted Subsidiaries providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition; *provided*, that (a) such Indebtedness is not reflected on the balance sheet of Parent, or any of its Restricted Subsidiaries (Contingent Obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet shall not be deemed to be reflected on such balance sheet for purposes of this clause (vi)) and (b) in the case of any disposition, the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds actually received by Parent and its Restricted Subsidiaries in connection with such disposition;

(vii) Indebtedness of Parent to a Restricted Subsidiary; *provided*, that any such Indebtedness owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Notes; *provided, further*, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to Parent or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (vii);

(viii) Indebtedness of a Restricted Subsidiary to Parent or another Restricted Subsidiary; *provided*, that if the Issuer or a Guarantor incurs such Indebtedness to a Restricted Subsidiary that is not the Issuer or a Guarantor, such Indebtedness is expressly subordinated in right of payment to the obligations of the Issuer in

respect of the Notes or the Guarantee of the Notes of such Guarantor, as applicable; *provided, further*, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of any such Indebtedness (except to Parent or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (viii);

(ix) shares of Preferred Stock of a Restricted Subsidiary issued to Parent or another Restricted Subsidiary; *provided*, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to Parent or another of its Restricted Subsidiaries or any pledge of such Capital Stock constituting a Permitted Lien) shall be deemed in each case to be an issuance of such shares of Preferred Stock (to the extent such Preferred Stock is then outstanding) not permitted by this clause (ix);

(x) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) for the purpose of limiting interest rate risk with respect to any Indebtedness permitted to be incurred under this Indenture, exchange rate risk or commodity pricing risk;

(xi) obligations in respect of self-insurance and obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by Parent or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business;

(xii) (A) Indebtedness or Disqualified Stock of Parent and Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference up to 100% of the net cash proceeds received by Parent since immediately after the Issue Date from the issue or sale of Equity Interests of Parent or cash contributed to the capital of Parent (in each case, other than proceeds of Disqualified Stock or sales of Equity Interests to Parent or any of its Subsidiaries) as determined in accordance with clauses (C)(2) and (C)(3) of Section 4.07(a) hereof to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments pursuant to Section 4.07(b) hereof or to make Permitted Investments (other than Permitted Investments specified in clauses (a), (b) or (c) of the definition thereof) and,

(B) Indebtedness or Disqualified Stock of Parent and Indebtedness, Disqualified Stock or Preferred Stock of Parent or any Restricted Subsidiary in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this clause (xii)(B), does not exceed the greater of (x) \$75.0 million and (y) 3.25% of Total Assets (in each case, determined on the date of such incurrence); it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this clause (xii)(B) shall cease to be deemed incurred or outstanding for purposes of this clause (xii)(B) but shall be deemed incurred for the purposes of Section 4.09(a) hereof from and after the first date on which Parent or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under Section 4.09(a) hereof without reliance on this clause (xii)(B);

(xiii) the incurrence or issuance by Parent or any Restricted Subsidiary of Indebtedness, Disqualified Stock or Preferred Stock which serves to extend, replace, refund, refinance, renew or defease any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued as permitted under Section 4.09(a) hereof and clauses (ii), (iii), (iv), (x) and (xii)(A) of this Section 4.09(b), this clause (xiii) and clause (xiv) of this Section 4.09(b) or any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued to so extend, replace, refund, refinance, renew or defease such Indebtedness, Disqualified Stock or Preferred Stock including additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay premiums (including tender premiums), defeasance costs, and accrued interest, fees and expenses in connection therewith (the “**Refinancing Indebtedness**”)

prior to its respective maturity; *provided*, that:

(A) such Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being extended, replaced, refunded, refinanced, renewed or defeased (or requires no or nominal payments in cash prior to the date that is 91 days after the maturity date of the Notes);

(B) to the extent such Refinancing Indebtedness extends, replaces, refunds, refinances, renews or defeases (i) Indebtedness subordinated in right of payment to the Notes or any Guarantee thereof, such Refinancing Indebtedness is subordinated in right of payment to the Notes or the Guarantee thereof at least to the same extent as the Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively; and

(C) such Refinancing Indebtedness shall not include:

(1) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of Parent that is not the Issuer or a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Issuer;

(2) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of Parent that is not the Issuer or a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(3) Indebtedness or Disqualified Stock of Parent or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

and, *provided, further*, that subclause (A) of this clause (xiii) will not apply to any extension, replacement, refunding, refinancing, renewal or defeasance of any Secured Indebtedness;

(xiv) (A) Indebtedness, Disqualified Stock or Preferred Stock of Parent or a Restricted Subsidiary incurred or issued to finance an acquisition (or other purchase of assets) or (B) Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by Parent or any Restricted Subsidiary or merged into or consolidated with Parent or a Restricted Subsidiary in accordance with the terms of this Indenture; *provided*, that in the case of clauses (A) and (B), after giving effect to such acquisition, merger or consolidation, either (x) Parent would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Test set forth in Section 4.09(a) or (y) the Fixed Charge Coverage Ratio for Parent and its Restricted Subsidiaries is equal to or greater than immediately prior to such acquisition, merger or consolidation;

(xv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within five Business Days of its incurrence;

(xvi) Indebtedness of Parent or any of its Restricted Subsidiaries supported by a letter of credit issued pursuant to the Credit Facilities, in a principal amount not in excess of the stated amount of such letter of credit;

(xvii) (A) any guarantee by Parent or a Restricted Subsidiary of Indebtedness or other obligations of any Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by such Restricted Subsidiary is permitted under the terms of this Indenture, or

(B) any guarantee by a Restricted Subsidiary of Indebtedness of Parent; *provided*, that such guarantee is incurred in accordance with Section 4.15 hereof;

(xviii) Indebtedness consisting of Indebtedness issued by Parent or any of its Restricted Subsidiaries to future, present or former employees, directors, officers, managers and consultants thereof, their respective Controlled Investment Affiliates or Immediate Family Members, in each case to finance the purchase or redemption of Equity Interests of Parent or any direct or indirect parent company of Parent to the extent described in Section 4.07(b)(iv) hereof;

(xix) to the extent constituting Indebtedness, customer deposits and advance payments (including progress premiums) received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(xx) (A) Indebtedness owed on a short-term basis of no longer than 30 days to banks and other financial institutions incurred in the ordinary course of business of Parent and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements to manage cash balances of Parent and its Restricted Subsidiaries and (B) Indebtedness in respect of Bank Products;

(xxi) Indebtedness incurred by a Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business on arm's length commercial terms;

(xxii) Indebtedness of Parent or any of its Restricted Subsidiaries consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business;

(xxiii) the incurrence of Indebtedness of Restricted Subsidiaries of Parent that are not the Issuer or Guarantors in an amount outstanding under this clause (xxiii) not to exceed together with any other Indebtedness incurred under this clause (xxiii) the greater of (A) \$25.0 million and (B) 1.25% of Total Assets (in each case, determined on the date of such incurrence); it being understood that any Indebtedness deemed incurred pursuant to this clause (xxiii) shall cease to be deemed incurred or outstanding for purposes of this clause (xxiii) but shall be deemed incurred for the purposes of Section 4.09(a) hereof from and after the first date on which such Restricted Subsidiaries could have incurred such Indebtedness under Section 4.09(a) hereof without reliance on this clause (xxiii); and

(xxiv) Indebtedness of Parent or any of its Restricted Subsidiaries undertaken in connection with cash management and related activities with respect to any Subsidiary or joint venture in the ordinary course of business.

(c) For purposes of determining compliance with this Section 4.09:

(i) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (i) through (xxiv) of Section 4.09(b) hereof or is

entitled to be incurred pursuant to Section 4.09(a) hereof, Parent, in its sole discretion, shall classify or reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and shall only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock in one of the above clauses or under Section 4.09(a) hereof; *provided*, that all Indebtedness outstanding under the Senior Secured Credit Facilities on the Issue Date (and any refinancing thereof with Secured Indebtedness) shall at all times be treated as incurred and outstanding under Section 4.09(b)(i) hereof;

(ii) Parent shall be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in Section 4.09(a) and Section 4.09(b) hereof; and

(iii) subject to the proviso to clause (i) above, the Issuer shall be entitled to later reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock in any manner that complies with this Section 4.09 at the time of such reclassification.

Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, of the same class shall not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 4.09.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. Dollar Equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided*, that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed (A) the principal amount of such Indebtedness being refinanced plus (B) the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with such refinancing.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

Notwithstanding anything to the contrary, Parent shall not, and shall not permit the Issuer or any other Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is contractually subordinated or junior in right of payment to any Indebtedness of Parent, the Issuer or such Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the Notes or Parent's or such Guarantor's Guarantee to the extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of Parent, the Issuer or such Guarantor, as the case may be.

This Indenture shall not treat (1) unsecured Indebtedness as subordinated or junior to Secured Indebtedness merely because it is unsecured or (2) Indebtedness as subordinated or junior to any other Indebtedness merely because it has a junior priority with respect to the same collateral or is secured by different collateral or because it is guaranteed by other obligors.

Section 4.10. Asset Sales.

(a) Parent shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale, unless:

(i) Parent and its Restricted Subsidiaries receive consideration at the time of such Asset Sale at least equal to the fair market value of the assets sold or otherwise disposed of; and

(ii) except in the case of a Permitted Asset Swap, at least 75.0% of the consideration therefor received by Parent or such Restricted Subsidiary, as the case may be, is in the form of Cash Equivalents; *provided*, that the amount of:

(A) any liabilities (as shown on Parent's most recent consolidated balance sheet or in the footnotes thereto) of Parent or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Notes, that are assumed by the transferee of any such assets and for which Parent and all of its Restricted Subsidiaries have been validly released by all applicable creditors in writing;

(B) any securities, notes or other obligations or assets received by Parent or such Restricted Subsidiary from such transferee that are converted by Parent or such Restricted Subsidiary into Cash Equivalents (to the extent of the Cash Equivalents received) within 180 days following the closing of such Asset Sale; and

(C) any Designated Non-cash Consideration received by Parent or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (C) that is at that time outstanding, not to exceed the greater of (x) \$35.0 million and (y) 2.00% of Total Assets at the time of the receipt of such Designated Non-cash Consideration, with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value,

shall be deemed to be Cash Equivalents for purposes of this provision and for no other purpose.

(b) Within 450 days after the receipt of any Net Proceeds of any Asset Sale, Parent or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale,

(i) to repay and reduce:

(A) Obligations under the Senior Secured Credit Facilities, and to correspondingly reduce commitments with respect thereto;

(B) Obligations under Secured Indebtedness, which is secured by a Lien that is permitted by this Indenture, and to correspondingly reduce commitments with respect thereto;

(C) Obligations under other Senior Indebtedness (and to correspondingly reduce commitments with respect thereto), *provided* that the Issuer shall equally and ratably reduce Obligations under the Notes as provided under Section 3.07 hereof or through open-market purchases (to the extent such purchases are at or above 100% of the principal amount thereof) or by making an offer (in accordance with the procedures set forth in Section 3.09 and Section 4.10(c) hereof) to all Holders to purchase their Notes at 100% of the principal amount thereof, plus the

amount of accrued but unpaid interest, if any, on the amount of Notes to be repurchased, to the date of repurchase; or

(D) Indebtedness of a Restricted Subsidiary that is not a Guarantor, other than Indebtedness owed to Parent or another Restricted Subsidiary; or

(ii) to make (A) an Investment in any one or more businesses, *provided* that such Investment in any business is in the form of the acquisition of Capital Stock or capital contributions and results in the Issuer or any of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (B) capital expenditures or (C) acquisitions of other assets, in the case of each of (A), (B) and (C), used or useful in a Similar Business; or

(iii) to make an Investment in (A) any one or more businesses, *provided* that such Investment in any business is in the form of the acquisition of Capital Stock or capital contributions and results in Parent or any of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (B) properties or (C) acquisitions of other assets that, in the case of each of (A), (B) and (C), replace the businesses, properties and/or assets that are the subject of such Asset Sale;

provided, that in the case of clauses (ii) and (iii) above, a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment so long as Parent, or such Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds will be applied to satisfy such commitment within 180 days of such commitment (an “**Acceptable Commitment**”) and, in the event any Acceptable Commitment is later cancelled or terminated for any reason before the Net Proceeds are applied in connection therewith, the Issuer or such Restricted Subsidiary enters into another Acceptable Commitment (a “**Second Commitment**”) within 180 days of such cancellation or termination; *provided further* that if any Second Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied, then such Net Proceeds shall constitute Excess Proceeds.

(c) Any Net Proceeds from an Asset Sale that are not invested or applied as provided and within the time period set forth in Section 4.10(b) hereof will be deemed to constitute “**Excess Proceeds**.” When the aggregate amount of Excess Proceeds exceeds \$20.0 million, the Issuer shall make an offer to all Holders and, if required by the terms of any Indebtedness that is *pari passu* with the Notes (“**Pari Passu Indebtedness**”), to the holders of such Pari Passu Indebtedness (an “**Asset Sale Offer**”), to purchase the maximum aggregate principal amount of the Notes and such Pari Passu Indebtedness that is in an amount equal to at least \$2,000, or an integral multiple of \$1,000 in excess thereof, that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100.0% of the principal amount thereof (or accreted value thereof, if less), plus accrued and unpaid interest, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture. The Issuer will commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed \$20.0 million by delivering the notice required pursuant to the terms of this Indenture, with a copy to the Trustee. The Issuer may satisfy the foregoing obligations with respect to any Net Proceeds from an Asset Sale by making an Asset Sale Offer with respect to such Net Proceeds prior to the expiration of the relevant 450 days (or such longer period provided above) or with respect to Excess Proceeds of \$20.0 million or less.

To the extent that the aggregate amount of Notes and such Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, Parent and its Restricted Subsidiaries may use any remaining Excess Proceeds for general corporate purposes, subject to compliance with the other covenants contained in this Indenture. If the aggregate principal amount of Notes and Pari Passu Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and the Issuer shall select such Pari Passu Indebtedness to be purchased on a pro rata basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered with adjustments as necessary so that no Notes or Pari Passu Indebtedness will be repurchased in part in an unauthorized denomination. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds that resulted in the Asset Sale Offer shall be reset to zero (regardless of

whether there are any remaining Excess Proceeds upon such completion).

(d) Pending the final application of any Net Proceeds pursuant to this Section 4.10, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility, including under the Senior Secured Credit Facilities, or otherwise invest such Net Proceeds in any manner not prohibited by this Indenture.

(e) The notice, if delivered or mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. If (i) the notice is delivered or mailed in a manner herein provided and (ii) any Holder fails to receive such notice or a Holder receives such notice but it is defective, such Holder's failure to receive such notice or such defect shall not affect the validity of the proceedings for the purchase of the Notes as to all other Holders that properly received such notice without defect. The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in this Indenture by virtue thereof.

The provisions of this Section 4.10 may be waived or modified with the written consent of the Holders of a majority in principal amount of the Notes then outstanding.

Section 4.11. Transactions with Affiliates.

(a) Parent shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with any Affiliate of Parent (each of the foregoing, an "**Affiliate Transaction**") involving aggregate payments or consideration in excess of \$5.0 million, unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to Parent or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by Parent or such Restricted Subsidiary with an unrelated Person on an arm's-length basis; and

(ii) Parent delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of \$25.0 million, a resolution adopted by the majority of the board of directors of Parent approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with Section 4.11(a)(i) hereof.

(b) The provisions of Section 4.11(a) hereof shall not apply to the following:

(i) transactions between or among Parent or any of its Restricted Subsidiaries;

(ii) Restricted Payments permitted by Section 4.07 hereof and the definition of "Permitted Investments";

(iii) the payment of reasonable and customary fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided on behalf of or for the benefit of, current or former employees, directors, officers, managers or consultants of Parent or any of its Restricted Subsidiaries;

(iv) transactions in which Parent or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to Parent or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to Parent or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by Parent or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;

(v) any agreement as in effect as of the Issue Date, or any amendment thereto (so long as any such amendment is not disadvantageous in any material respect in the good faith judgment of the board of directors of Parent to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(vi) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(vii) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services that are Affiliates, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture which are fair to Parent and its Restricted Subsidiaries, in the reasonable determination of the board of directors of Parent or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(viii) the issuance of Equity Interests (other than Disqualified Stock) of Parent;

(ix) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility;

(x) payments and Indebtedness and Disqualified Stock (and cancellation of any thereof) of Parent and its Restricted Subsidiaries and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, manager or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members) of Parent or any of its Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement that are, in each case, approved by Parent in good faith; and any employment agreements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such employees, directors, officers, managers or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) that are, in each case, approved by Parent in good faith;

(xi) payments to or from, and transactions with, any joint venture in the ordinary course of business (including, without limitation, any cash management activities related thereto);

(xii) any lease entered into between Parent or any Restricted Subsidiary, as lessee and any Affiliate of Parent, as lessor, which is approved by a majority of the disinterested members of the board of directors of Parent in good faith;

(xiii) intellectual property licenses in the ordinary course of business; and

(xiv) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to stockholders of Parent thereof pursuant to the stockholders agreement or the registration rights agreement entered into on the Issue Date in connection therewith.

Section 4.12. Liens. Parent shall not, and shall not permit the Issuer or any other Guarantor to, directly or indirectly, create, incur, assume or permit to exist any Lien (except Permitted Liens) that secures Obligations under any Indebtedness or any related guarantee of Indebtedness, on any asset or property of Parent, the Issuer or any Guarantor unless:

- (a) in the case of Liens securing Subordinated Indebtedness, the Notes and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; and
- (b) in all other cases, the Notes or the Guarantees are equally and ratably secured,

except that the foregoing shall not apply to or restrict (A) Liens securing obligations in respect of the Notes (and exchange notes with respect thereto) and the related Guarantees, (B) Liens securing obligations in respect of (x) Indebtedness and other Obligations permitted to be incurred under Credit Facilities, including any letter of credit facility relating thereto, that was permitted by the terms of this Indenture to be incurred pursuant to Section 4.09(b)(i) hereof and (y) obligations of Parent or any Subsidiary in respect of any Bank Products provided by any lender party to any Senior Secured Credit Facilities or any Affiliate of such lender (or any Person that was a lender or an Affiliate of a lender at the time the applicable agreements pursuant to which such Bank Products are provided were entered into) and (C) Liens securing obligations in respect of Indebtedness permitted to be incurred under Section 4.09 hereof; *provided*, that, with respect to Liens securing Indebtedness permitted under this subclause (C), at the time of incurrence and after giving *pro forma* effect thereto and to the application of the net proceeds thereof, the Consolidated Secured Debt Ratio would be no greater than 4.00 to 1.00.

Any Lien created for the benefit of the Holders of the Notes pursuant to this Section 4.12 shall be deemed automatically and unconditionally released and discharged upon the release and discharge of each of the Liens described in clauses (i) and (ii) above.

Section 4.13. Company Existence. Subject to Article 5 hereof, Parent shall do or cause to be done all things necessary to preserve and keep in full force and effect its company existence, and the corporate, partnership or other existence of each of its Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of Parent or any such Restricted Subsidiary; *provided*, that Parent shall not be required to preserve the corporate, partnership or other existence of its Restricted Subsidiaries, if Parent in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of Parent and its Restricted Subsidiaries, taken as a whole.

Section 4.14. Offer to Repurchase Upon Change of Control.

(a) If a Change of Control occurs, unless the Issuer has previously or concurrently delivered a redemption notice with respect to all the outstanding Notes under Section 3.07 hereof, the Issuer shall make an offer to purchase all of the Notes pursuant to the offer described below (the “**Change of Control Offer**”) at a price in cash (the “**Change of Control Payment**”) equal to 101.0% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to, but excluding, the date of purchase, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date. Within 30 days following any Change of Control, the Issuer shall deliver notice of such Change of Control Offer electronically or by first-class mail, with a copy to the Trustee, to each Holder to the address of such Holder appearing in the Note Register or otherwise in accordance with the Applicable Procedures with the following information:

- (i) that a Change of Control Offer is being made pursuant to this Section 4.14 and that all Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuer;
- (ii) the purchase price and the purchase date, which will be no earlier than 30 days nor later

than 60 days from the date such notice is delivered (the “**Change of Control Payment Date**”);

(iii) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(iv) that unless the Issuer defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest on the Change of Control Payment Date;

(v) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer shall be required to surrender such Notes, with the form entitled “Option of Holder to Elect Purchase” on the reverse of such Notes completed, to the Paying Agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(vi) that Holders shall be entitled to withdraw their tendered Notes and their election to require the Issuer to purchase such Notes, *provided* that the Paying Agent receives, not later than the close of business on the second Business Day prior to the expiration date of the Change of Control Offer, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased;

(vii) that Holders whose Notes are being purchased only in part shall be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered. The unpurchased portion of the Notes must be equal to at least \$2,000 or any integral multiple of \$1,000 in excess of \$2,000;

(viii) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control; and

(ix) the other instructions, as determined by the Issuer, consistent with this Section 4.14, that a Holder must follow in order to have the Notes repurchased.

The notice, if delivered or mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. If (x) the notice is delivered or mailed in a manner herein provided and (y) any Holder fails to receive such notice or a Holder receives such notice but it is defective, such Holder’s failure to receive such notice or such defect shall not affect the validity of the proceedings for the purchase of the Notes as to all other Holders that properly received such notice without defect. The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuer will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in this Indenture by virtue thereof.

(b) On the Change of Control Payment Date, the Issuer will, to the extent permitted by law:

(i) accept for payment all Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer;

(ii) deposit with the Paying Agent an amount equal to the aggregate Change of Control

Payment in respect of all Notes or portions thereof so tendered; and

(iii) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer's Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuer.

(c) The Issuer shall not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

(d) Notwithstanding anything to the contrary herein, a Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(e) Other than as specifically provided in this Section 4.14, any purchase pursuant to this Section 4.14 shall be made pursuant to the provisions of Sections 3.02, 3.05 and 3.06 hereof, and references therein to "redeem," "redemption," "Redemption Date" and similar words shall be deemed to refer to "purchase," "repurchase" and "Change of Control Payment Date" and similar words, as applicable.

(f) If Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Issuer, or any third party making a Change of Control Offer in lieu of the Issuer as described in this Section 4.14, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Issuer or such third party shall have the right, upon not less than 30 nor more than 60 days' prior notice, given not more than 30 days following such purchase pursuant to the Change of Control Offer described in this Section 4.14, to redeem all Notes that remain outstanding following such purchase at a price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest to but excluding the date of redemption.

The provisions of this Section 4.14 may be waived or modified with the written consent of the Holders of a majority in principal amount of the Notes then outstanding.

Section 4.15. *Limitation on Guarantees of Indebtedness by Restricted Subsidiaries.* Parent shall not permit any of its Wholly-Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiaries guarantee other capital markets debt securities of the Issuer or any Guarantor), other than the Issuer, a Guarantor, a Foreign Subsidiary or a Securitization Subsidiary, to guarantee the payment of any Indebtedness of the Issuer or any other Guarantor unless:

(a) such Restricted Subsidiary within 30 days after the guarantee of such Indebtedness executes and delivers a supplemental indenture to this Indenture the form of which is attached as Exhibit D hereto providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Issuer or any Guarantor, if such Indebtedness is by its express terms subordinated in right of payment to the Notes or such Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes; and

(b) such Restricted Subsidiary waives and shall not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other applicable rights against Parent or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee; *provided*, that this Section 4.15 shall not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not

incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary. Parent may elect, in its sole discretion, to cause any Subsidiary that is not otherwise required to be a Guarantor to become a Guarantor, in which case such Subsidiary shall not be required to comply with the 30 day period described in Section 4.15(a) hereof.

Section 4.16. *Suspension of Covenants.*

(a) During any period of time that (i) the Notes have Investment Grade Ratings from both Rating Agencies and (ii) no Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a “**Covenant Suspension Event**” and the date thereof being referred to as the “**Suspension Date**”) then, Section 4.07, Section 4.08, Section 4.09, Section 4.10, Section 4.11, Section 4.15 and Section 5.01(a)(iv) hereof shall not be applicable to the Notes (collectively, the “**Suspended Covenants**”).

(b) During any period that the foregoing covenants have been suspended, Parent may not designate any of its Subsidiaries as Unrestricted Subsidiaries pursuant to the second sentence of the definition of “Unrestricted Subsidiary.”

(c) In the event that Parent and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time as a result of the foregoing, and on any subsequent date (the “**Reversion Date**”) one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an Investment Grade Rating, then Parent and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under this Indenture with respect to future events. The period of time between the Suspension Date and the Reversion Date is referred to in this Indenture as the “**Suspension Period**.” Additionally, upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Net Proceeds shall be reset to zero.

(d) The Issuer shall give prompt written notice to the Trustee of the occurrence of each Suspension Date and Reversion Date.

(e) Notwithstanding the foregoing, in the event of any such reinstatement of the Suspended Covenants, no action taken or omitted to be taken by Parent or any of its Restricted Subsidiaries prior to such reinstatement will give rise to a Default or Event of Default under this Indenture with respect to the Notes; *provided*, that (i) with respect to Restricted Payments made after such reinstatement, the amount available to be made as Restricted Payments will be calculated as though Section 4.07 hereof had been in effect prior to, but not during, the Suspension Period; (ii) all Indebtedness incurred, or Disqualified Stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to Section 4.09(b)(iii) hereof; (iii) any Affiliate Transaction entered into after such reinstatement pursuant to an agreement entered into during any Suspension Period shall be deemed to be permitted pursuant to Section 4.11(b)(vi) hereof, (iv) any encumbrance or restriction on the ability of any Restricted Subsidiary that is not a Guarantor to take any action described in clauses (i) through (iii) of Section 4.08(a) hereof; that becomes effective during any Suspension Period shall be deemed to be permitted pursuant to Section 4.08(b)(i) hereof; and (v) no Subsidiary of the Issuer shall be required to comply with Section 4.15 hereof after such reinstatement with respect to any guarantee entered into by such Subsidiary during any Suspension Period.

(f) The Trustee shall have no obligation to determine if a Suspension Period has commenced or terminated or to provide Holders with notice of the commencement or termination of a Suspension Period.

ARTICLE 5
SUCCESSORS

Section 5.01. *Merger, Consolidation or Sale of All or Substantially All Assets.*

(a) Neither Parent nor the Issuer may consolidate or merge with or into or wind up into (whether or not Parent or the Issuer is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i) Parent or the Issuer is the surviving Person or the Person formed by or surviving any such consolidation or merger (if other than Parent or the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made, is a Person organized or existing under the laws of the United States, any state thereof or the District of Columbia (such Person, as the case may be, being herein called the “**Successor Company**”); *provided*, that in the case of a transaction involving the Issuer where the surviving Person is not a corporation, a co-obligor of the Notes is a corporation;

(ii) the Successor Company, if other than Parent or the Issuer, expressly assumes all the obligations of Parent or the Issuer under Parent’s Guarantee or the Notes, as applicable, pursuant to supplemental indentures or other documents or instruments;

(iii) immediately after such transaction, no Default exists;

(iv) immediately after giving pro forma effect to such transaction and any related financing transactions, as if such transactions had occurred at the beginning of the applicable four-quarter period,

(A) Parent or the Successor Company would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Test, or

(B) the Fixed Charge Coverage Ratio for Parent or the Successor Company, as applicable, and its Restricted Subsidiaries would be equal to or greater than the Fixed Charge Coverage Ratio for Parent and its Restricted Subsidiaries immediately prior to such transaction;

(v) in the case of any such transaction involving the Issuer, each Guarantor, unless it is the other party to the transactions described above, in which case Section 5.01(c)(i)(B) hereof shall apply, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person’s obligations under this Indenture, the Notes and the Registration Rights Agreement; and

(vi) Parent shall have delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger, amalgamation or transfer and such supplemental indentures, if any, comply with this Indenture.

(b) The Successor Company shall succeed to, and be substituted for the Issuer under this Indenture, the Guarantees and the Notes, as applicable. Notwithstanding clauses (iii) and (iv) of Section 5.01(a) hereof,

(i) any Restricted Subsidiary may consolidate or amalgamate with or merge with or into or transfer all or part of its properties and assets to Parent or the Issuer or any other Restricted Subsidiary, and

(ii) Parent or the Issuer may merge with an Affiliate of Parent or the Issuer solely for the purpose of reincorporating Parent or the Issuer in the United States, any state thereof, the District of Columbia or any territory thereof.

(c) Subject to Section 10.06 hereof, no Guarantor (other than Parent which shall be subject to the provisions set forth in Section 5.01(a) hereof) shall, and Parent shall not permit any such Guarantor to, consolidate, amalgamate or merge with or into or wind up into (whether or not such Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(i) (A) such Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of the jurisdiction of organization of such Guarantor, as applicable, or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such surviving Guarantor or such Person, as the case may be, being herein called the “**Successor Person**”); (B) the Successor Person, if other than such Guarantor, expressly assumes all the obligations of such Guarantor under this Indenture and such Guarantor’s related Guarantee pursuant to supplemental indentures or other documents or instruments; (C) immediately after such transaction, no Default exists; and (D) Parent shall have delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger, amalgamation or transfer and such supplemental indentures, if any, comply with this Indenture;

(ii) the transaction is made in compliance with Section 4.10(a) hereof; or

(iii) in the case of assets comprised of Equity Interests of Subsidiaries that are not Guarantors, such Equity Interests are sold, assigned, transferred, leased, conveyed or otherwise disposed of to one or more Restricted Subsidiaries.

(d) Subject to Section 10.06 hereof, the Successor Person shall succeed to, and be substituted for, such Guarantor under this Indenture and such Guarantor’s Guarantee. Notwithstanding the foregoing, any Guarantor (other than Parent) may (1) merge or consolidate with or into, wind up into or transfer all or part of its properties and assets to another Guarantor or the Issuer, (2) merge with an Affiliate of the Issuer solely for the purpose of reincorporating the Guarantor in the United States, any state thereof or the District of Columbia, (3) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Guarantor or (4) liquidate or dissolve or change its legal form if Parent determines in good faith that such action is in the best interests of Parent.

Section 5.02. Successor Person Substituted. Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Issuer or a Guarantor in accordance with Section 5.01 hereof, the successor Person formed by such consolidation or into or with which the Issuer or such Guarantor, as applicable, is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the Issuer or such Guarantor, as applicable, shall refer instead to the successor Person, as applicable, and not to the Issuer or such Guarantor, as applicable), and may exercise every right and power of the Issuer or such Guarantor, as applicable, under this Indenture with the same effect as if such successor Person, as applicable, had been named as the Issuer or a Guarantor, as applicable, herein; *provided* that the predecessor Issuer shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the Issuer’s assets that meets the requirements of Section 5.01 hereof.

ARTICLE 6 DEFAULTS AND REMEDIES

Section 6.01. Events of Default.

(a) An “**Event of Default**,” wherever used herein, means any one of the following events:

(i) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Notes;

(ii) default for 30 days or more in the payment when due of interest or Additional Interest, if any, on or with respect to the Notes;

(iii) subject to Section 4.03(b) hereof, failure by the Issuer or any Guarantor for 60 days after receipt of written notice given by the Trustee or the Holders of not less than 25% in principal amount of the then outstanding Notes to comply with any of its obligations, covenants or agreements (other than a default referred to in clause (i) or (ii) above) contained in this Indenture or the Notes;

(iv) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by Parent or any of its Restricted Subsidiaries or the payment of which is guaranteed by Parent or any of its Restricted Subsidiaries, other than Indebtedness owed to Parent or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Notes, if both:

(A) such default either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity; and

(B) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate \$30.0 million or more outstanding;

(v) failure by Parent or any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest audited consolidated financial statements of Parent for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary) to pay final judgments aggregating in excess of \$30.0 million (net of amounts covered by insurance policies issued by reputable insurance companies), which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(vi) Parent, the Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest audited consolidated financial statements of Parent for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary), pursuant to or within the meaning of any Bankruptcy Law:

(A) commences proceedings to be adjudicated bankrupt or insolvent;

(B) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Bankruptcy Law;

(C) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(D) makes a general assignment for the benefit of its creditors; or

(E) generally is not paying its debts as they become due;

(vii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against Parent, the Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest audited consolidated financial statements of Parent for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary), in a proceeding in which Parent, the Issuer or any such Subsidiary or such group of Restricted Subsidiaries is to be adjudicated bankrupt or insolvent;

(B) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of Parent, the Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest audited consolidated financial statements of Parent for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary), or for all or substantially all of the property of Parent, the Issuer or any such Subsidiary or such group of Restricted Subsidiaries; or

(C) orders the liquidation of Parent, the Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest audited consolidated financial statements of the Issuer for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary);

and the order or decree remains unstayed and in effect for 60 consecutive days; or

(viii) the Guarantee of any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest audited consolidated financial statements of Parent for a fiscal quarter end provided as required under Section 4.03 hereof) would constitute a Significant Subsidiary) shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of any Guarantor that is a Significant Subsidiary (or the responsible officers of any group of Restricted Subsidiaries that together (as of the latest audited consolidated financial statements of Parent for a fiscal quarter end) would constitute a Significant Subsidiary), as the case may be, denies in writing that it has any further liability under its Guarantee or gives written notice to such effect, other than by reason of the termination of this Indenture or the release of any such Guarantee in accordance with this Indenture.

(b) In the event of any Event of Default specified in Section 6.01(a)(iv) hereof, such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Notes) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 30 days after such Event of Default arose:

(i) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged;

(ii) holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or

(iii) the default that is the basis for such Event of Default has been cured.

Section 6.02. Acceleration. If any Event of Default (other than an Event of Default of the type specified in clause (vi) or (vii) of Section 6.01(a) hereof with respect to Parent or the Issuer) occurs and is continuing under this Indenture, the Trustee or the Holders of at least 25% in principal amount of the then total outstanding Notes may, by notice to the Issuer and the Trustee, in either case specifying in such notice the respective Event of Default and that such notice is a “notice of acceleration,” declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately.

Upon the effectiveness of such declaration, such principal of and premium, if any, and interest will be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising under clause (vi) or (vii) of Section 6.01(a) hereof with respect to Parent or the Issuer, all outstanding Notes will become due and payable without further action or notice. The Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest.

Section 6.03. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04. Waiver of Past Defaults. Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee (with a copy to the Issuer; *provided*, that any waiver or rescission under this Section 6.04 shall be valid and binding notwithstanding the failure to provide a copy of such notice to the Issuer) may on behalf of all the Holders waive any existing Default and its consequences under this Indenture (except a continuing Default in the payment of interest on, premium, if any, or the principal of any Note held by a non-consenting Holder) (including in connection with an Asset Sale Offer or a Change of Control Offer) and rescind any acceleration with respect to the Notes and its consequences under this Indenture (except if such rescission would conflict with any judgment of a court of competent jurisdiction). Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto.

Section 6.05. Control by Majority. Subject to Section 7.01(e) hereof, Holders of a majority in aggregate principal amount of the then total outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee and the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability.

Section 6.06. Limitation on Suits. Subject to Section 6.07 hereof, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

- (a) such Holder has previously given the Trustee written notice that an Event of Default is continuing;
- (b) Holders of at least 25% in principal amount of the total outstanding Notes have requested

in writing the Trustee to pursue the remedy;

(c) Holders have offered the Trustee security or indemnity reasonably satisfactory to it against any loss, liability or expense;

(d) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(e) Holders of a majority in aggregate principal amount of the then total outstanding Notes have not given the Trustee a direction in writing inconsistent with such written request within such 60-day period.

Section 6.07. *Rights of Holders to Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and Additional Interest, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an Asset Sale Offer or a Change of Control Offer), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08. *Collection Suit by Trustee.* If an Event of Default specified in Section 6.01(a)(i) or (ii) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuer for the whole amount of principal of, premium, if any, Additional Interest, if any, and interest remaining unpaid on, the Notes and interest on overdue principal, if applicable, and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09. *Restoration of Rights and Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, Parent, the Issuer, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 6.10. *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07 hereof, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.12. *Trustee May File Proofs of Claim.* The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Issuer (or any other obligor upon the Notes including the Guarantors), its creditors or its property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any

money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.13. Priorities. If the Trustee or any Agent collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

- (a) to the Trustee, such Agent, their agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee or such Agent and the costs and expenses of collection;
- (b) to Holders for amounts due and unpaid on the Notes for principal, premium, if any, Additional Interest, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and
- (c) to the Issuer or to such party as a court of competent jurisdiction shall direct including a Guarantor, if applicable.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.13.

Section 6.14. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.14 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10.0% in principal amount of the then outstanding Notes.

ARTICLE TRUSTEE

Section 7.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and

no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of willful misconduct or bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not investigate or confirm the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.02, 6.04 or 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01.

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders unless the Holders have offered to the Trustee indemnity or security reasonably satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02. *Rights of Trustee.*

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer and its Restricted Subsidiaries, personally or by agent or attorney at the sole cost of the Issuer and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the

misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer shall be sufficient if signed by an Officer of the Issuer.

(f) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if an indemnity satisfactory to it against such risk or liability is not assured to it.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or Event of Default is received by a Responsible Officer of the Trustee at the Corporate Trust Office, and such notice references the Notes and this Indenture.

(h) The Trustee shall not be required to give any bond or surety in respect of the performance of its power and duties hereunder.

(i) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(j) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(k) In the event the Issuer is required to pay Additional Interest, the Issuer will provide written notice to the Trustee of the Issuer's obligation to pay Additional Interest no later than 15 days prior to the next Interest Payment Date, which notice shall set forth the amount of the Additional Interest to be paid by the Issuer. The Trustee shall not at any time be under any duty or responsibility to any Holders to determine whether the Additional Interest is payable and the amount thereof.

(l) Delivery of reports, information and documents (including without limitation reports contemplated under Section 4.03 hereof) to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). Except with respect to receipt of payments of scheduled interest and any Default or Event of Default information contained in the Officer's Certificate delivered to it pursuant to Section 4.04, the Trustee shall have no duty to monitor or investigate the Issuer's compliance with or the breach of any representation, warranty or covenant made in this Indenture.

(m) The permissive rights of the Trustee to take certain actions under this Indenture shall not be construed as a duty unless so specified herein.

Section 7.03. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer or any of its Affiliates with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it

must eliminate such conflict within 90 days, apply to the SEC for permission to continue as Trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

Section 7.04. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuer's use of the proceeds from the Notes or any money paid to the Issuer or upon the Issuer's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05. Notice of Defaults. If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall deliver to Holders a notice of the Default within 90 days after it occurs, unless such Default shall have been cured or waived, or if discovered after 90 days, promptly thereafter. The Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest.

Section 7.06. Reports by Trustee to Holders. Within 60 days after each February 1, beginning on February 1, 2013, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders a brief report dated as of such reporting date that complies with Trust Indenture Act Section 313(a) (but if no event described in Trust Indenture Act Section 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with Trust Indenture Act Section 313(b)(2). The Trustee shall also transmit by mail all reports as required by Trust Indenture Act Section 313(c).

A copy of each report at the time of its mailing to the Holders shall be mailed to the Issuer and filed with the SEC and each stock exchange on which the Notes are listed in accordance with Trust Indenture Act Section 313(d). The Issuer shall promptly notify the Trustee when the Notes are listed on any stock exchange or delisted therefrom.

Section 7.07. Compensation and Indemnity. The Issuer shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee promptly upon request for all out-of-pocket disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Issuer and the Guarantors, jointly and severally, shall indemnify the Trustee and its officers, directors, employees, agents and any predecessor trustee and its officers, directors, employees and agents for, and hold the Trustee harmless against, any and all loss, damage, claims, liability or expense (including reasonable attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the reasonable costs and expenses of enforcing this Indenture against the Issuer or any of the Guarantors (including this Section 7.07) or defending itself against any claim whether asserted by any Holder, the Issuer or any Guarantor, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder) (but excluding taxes imposed on such Persons in connection with compensation for such administration or performance). The Trustee shall notify Parent and the Issuer promptly of any claim of which a Responsible Officer has received written notice for which it may seek indemnity. Failure by the Trustee to so notify Parent and the Issuer shall not relieve Parent and the Issuer of their respective obligations hereunder. The Issuer shall defend the claim and the Trustee may have separate counsel and the Issuer shall pay the reasonable fees and expenses of such counsel. Neither the Issuer nor any Guarantor need reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith. Neither the Issuer nor any Guarantor need pay for any settlement made without its consent.

The obligations of the Issuer under this Section 7.07 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

To secure the payment obligations of the Issuer and the Guarantors in this Section 7.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except money or property held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(a)(vi) or Section 6.01(a)(vii) hereof occurs, the expenses and the compensation for the services (including the reasonable fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

The Trustee shall comply with the provisions of Trust Indenture Act Section 313(b)(2) to the extent applicable.

Section 7.08. Replacement of Trustee. A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuer. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuer in writing. The Issuer may remove the Trustee if:

- (a) the Trustee fails to comply with Section 7.10 hereof or Trust Indenture Act Section 310;
- (b) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuer shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuer.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Issuer's expense), the Issuer or the Holders of at least 10% in principal amount of the then outstanding Notes, may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08,

the Issuer's obligations under Section 7.07 hereof shall continue for the benefit of the retiring Trustee.

Section 7.09. *Successor Trustee by Merger, etc.* If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.10. *Eligibility; Disqualification.* There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has, together with its parent, a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of Trust Indenture Act Sections 310(a)(1), (2) and (5). The Trustee is subject to Trust Indenture Act Section 310(b).

Section 7.11. *Preferential Collection of Claims Against Issuer.* The Trustee is subject to Trust Indenture Act Section 311(a), excluding any creditor relationship listed in Trust Indenture Act Section 311(b). A Trustee who has resigned or been removed shall be subject to Trust Indenture Act Section 311(a) to the extent indicated therein.

ARTICLE 8 LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01. *Option to Effect Legal Defeasance or Covenant Defeasance.* The Issuer may, at its option and at any time, elect to have either Section 8.02 or 8.03 hereof applied to all outstanding Notes and all obligations of the Guarantors with respect to the Guarantees upon compliance with the conditions set forth below in this Article 8.

Section 8.02. *Legal Defeasance and Discharge.* Upon the Issuer's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Issuer and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes and Guarantees and all Events of Default cured on the date the conditions set forth below are satisfied ("**Legal Defeasance**"). For this purpose, Legal Defeasance means that the Issuer and the Guarantors shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in (a) and (b) below (it being understood that such Notes shall not be deemed outstanding for accounting purposes), and to have satisfied all their other obligations under such Notes and this Indenture including that of the Guarantors (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same) and to have cured all then existing Events of Default, except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

- (a) the rights of Holders to receive payments in respect of the principal of, premium, if any, and interest on the Notes when such payments are due solely out of the trust created pursuant to this Indenture referred to in Section 8.04 hereof;
- (b) the Issuer's obligations with respect to Notes concerning issuing temporary Notes, registration of such Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;
- (c) the rights, powers, trusts, duties and immunities of the Trustee, and the Issuer's and the Guarantors' obligations in connection therewith; and

(d) this Section 8.02.

Subject to compliance with this Article 8, the Issuer may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03. Covenant Defeasance. Upon the Issuer's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Issuer and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14 and 4.15 hereof and clauses (iv) and (v) of Section 5.01(a), Sections 5.01(c) and 5.01(d) hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied ("**Covenant Defeasance**"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and the Guarantees, the Issuer and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and the Guarantees shall be unaffected thereby. In addition, upon the Issuer's exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Section 6.01(a)(iii) (solely with respect to the covenants that are released upon a Covenant Defeasance), 6.01(a)(iv), 6.01(a)(v), 6.01(a)(vi) (solely with respect to Restricted Subsidiaries subject thereto), 6.01(a)(vii) (solely with respect to Restricted Subsidiaries subject thereto) and 6.01(a)(viii) hereof shall not constitute Events of Default.

Section 8.04. Conditions to Legal or Covenant Defeasance. The following shall be the conditions to the application of either Section 8.02 or 8.03 hereof to the outstanding Notes:

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Notes:

(a) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, U.S. Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest due on the Notes on the stated maturity date or on the Redemption Date, as the case may be, of such principal, premium, if any, or interest on such Notes and the Issuer must specify whether such Notes are being defeased to maturity or to a particular Redemption Date;

(b) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions,

(i) the Issuer has received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(ii) since the issuance of the Notes, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such Legal Defeasance and will be subject to U.S. federal

income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to such tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, the Senior Secured Credit Facilities or any other material agreement or instrument (other than this Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make the deposit required to effect such Legal Defeasance or Covenant Defeasance and any similar and simultaneous deposit relating to other Indebtedness, and, in each case, the granting of Liens in connection therewith);

(f) the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, as of the date of such opinion and subject to customary assumptions and exclusions following the deposit, the trust funds will not be subject to the effect of Section 547 of Title 11 of the United States Code;

(g) the Issuer shall have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or any Guarantor or others; and

(h) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

Section 8.05. *Deposited Money and U.S. Government Securities to be Held in Trust; Other Miscellaneous Provisions.* Subject to Section 8.06 hereof, all money and U.S. Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "**Trustee**") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer or a Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or U.S. Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time upon the request of the Issuer any money or U.S. Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants

expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06. *Repayment to Issuer.* Subject to any applicable abandoned property law, any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal, and premium, if any, or interest has become due and payable shall be paid to the Issuer on its request or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease.

Section 8.07. *Reinstatement.* If the Trustee or Paying Agent is unable to apply any United States dollars or U.S. Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's and the Guarantors' obligations under this Indenture and the Notes and the Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; *provided* that, if the Issuer makes any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9 AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01. *Without Consent of Holders.* Notwithstanding Section 9.02 hereof, the Issuer, any Guarantor (with respect to a Guarantee or this Indenture to which it is a party) and the Trustee may amend or supplement this Indenture and any Guarantee or Notes without the consent of any Holder:

- (a) to cure any ambiguity, omission, mistake, defect or inconsistency;
- (b) to provide for uncertificated Notes in addition to or in place of certificated Notes;
- (c) to comply with Section 5.01 hereof;
- (d) to provide for the assumption of the Issuer's or any Guarantor's obligations to the Holders;
- (e) to make any change that would provide any additional rights or benefits to the Holders or that does not materially adversely affect the legal rights under this Indenture of any such Holder;
- (f) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or any Guarantor;
- (g) to provide for the issuance of Additional Notes in accordance with the terms of this Indenture;
- (h) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act;
- (i) to evidence and provide for the acceptance and appointment under this Indenture of a

successor Trustee hereunder pursuant to the requirements hereof;

(j) to provide for the issuance of exchange notes or private exchange notes, which are identical to exchange notes except that they are not freely transferable;

(k) to add a Guarantor under this Indenture or to release a Guarantor in accordance with the terms of this Indenture;

(l) to conform the text of this Indenture, Guarantees or the Notes to any provision of the "Description of the Notes" section of the Offering Memorandum to the extent that such provision in such "Description of the Notes" section was intended to be a substantially verbatim recitation of a provision of this Indenture, Guarantee or Notes as provided in an Officer's Certificate; or

(m) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including, without limitation, to facilitate the issuance and administration of the Notes; *provided*, that (a) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (b) such amendment does not materially and adversely affect the rights of Holders to transfer Notes.

Upon the request of the Issuer accompanied by a resolution of its board of directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof (to the extent requested by the Trustee and subject to the last sentence of Section 9.06), the Trustee shall join with the Issuer and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall have the right, but not be obligated to, enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise. Notwithstanding the foregoing, neither an Opinion of Counsel nor an Officer's Certificate, nor a board resolution, shall be required in connection with the addition of a Guarantor under this Indenture upon execution and delivery by such Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto.

Section 9.02. *With Consent of Holders.* Except as provided in Section 9.01 and this Section 9.02, the Issuer, the Guarantors and the Trustee may amend or supplement this Indenture, the Notes and the Guarantees with the consent of the Holders of at least a majority in principal amount of the Notes then outstanding, including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes and, subject to Section 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Guarantees or the Notes issued thereunder may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes (including consents obtained in connection with a purchase of or tender offer or exchange offer for the Notes). Section 2.08 hereof and Section 2.09 hereof shall determine which Notes are considered to be "outstanding" for the purposes of this Section 9.02.

Upon the request of the Issuer accompanied by a resolution of its board of directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders as aforesaid, the Trustee shall join with the Issuer and the Guarantors in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuer shall deliver to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuer to deliver such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Without the consent of each affected Holder of Notes, an amendment or waiver under this Section 9.02 may not, with respect to any Notes held by a non-consenting Holder:

- (a) reduce the principal amount of such Notes whose Holders must consent to an amendment, supplement or waiver;
- (b) reduce the principal of or change the fixed final maturity of any such Note or alter or waive the provisions with respect to the redemption of such Note (other than provisions relating to (i) notice periods (to the extent consistent with applicable requirements of clearing and settlement systems) for redemption and conditions to redemption and (ii) Section 3.09, Section 4.10 and Section 4.14 hereof;
- (c) reduce the rate of or change the time for payment of interest on any Note;
- (d) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this Indenture or any Guarantee which cannot be amended or modified without the consent of all affected Holders;
- (e) make any Note payable in money other than that stated therein;
- (f) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Notes;
- (g) make any change in these amendment and waiver provisions;
- (h) impair the right of any Holder to receive payment of principal of, or premium, if any, or interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;
- (i) make any change to or modify the ranking of the Notes that would adversely affect the Holders; or
- (j) except as expressly permitted by this Indenture, modify the Guarantees of Parent, any Significant Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for Parent), would constitute a Significant Subsidiary, in any manner materially adverse to the Holders.

Section 9.03. *Compliance with Trust Indenture Act.* Every amendment or supplement to this Indenture or the Notes shall be set forth in an amended or supplemental indenture that complies in all material respects with the Trust Indenture Act as then in effect.

Section 9.04. Revocation and Effect of Consents. Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement, or waiver. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the requisite number of Holders has been obtained.

Section 9.05. Notation on or Exchange of Notes. The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuer in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06. Trustee to Sign Amendments, etc. The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Issuer may not sign an amendment, supplement or waiver until the board of directors of the Issuer approves it. In executing any amendment, supplement or waiver, the Trustee shall be provided with, upon request, and (subject to Section 7.01 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 12.04 hereof, an Officer's Certificate and an Opinion of Counsel each stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuer and any Guarantors party thereto, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof (including Section 9.03 hereof). Notwithstanding the foregoing, neither an Opinion of Counsel nor an Officer's Certificate, nor a board resolution, shall be required for the Trustee to execute any supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto.

Section 9.07. Payment for Consent. Neither the Issuer nor any of its Subsidiaries shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

ARTICLE 10 GUARANTEES

Section 10.01. Guarantee. Subject to this Article 10, each of the Guarantors hereby, jointly and severally, irrevocably and unconditionally, guarantees, on an unsecured senior basis, to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the Obligations of the Issuer hereunder or thereunder, that: (a) the principal of and interest and premium, if any, on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the

Notes, if any, if lawful, and all other Obligations of the Issuer to the Holders or the Trustee hereunder or under the Notes shall be promptly paid in full, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same promptly. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor (other than payment in full of all of the Obligations of the Issuer hereunder or under the Notes). Each Guarantor hereby waives, to the fullest extent permitted by law, diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that this Guarantee shall not be discharged except by full payment of the obligations contained in the Notes and this Indenture or by release in accordance with the provisions of this Indenture.

Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Holder in enforcing any rights under this Section 10.01.

If any Holder or the Trustee is required by any court or otherwise to return to the Issuer, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantors, then any amount paid either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any nonpaying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantees.

Until terminated in accordance with Section 10.06, each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuer for liquidation, reorganization, should the Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuer's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

The Guarantee issued by any Guarantor shall be a general unsecured senior obligation of such Guarantor and shall be *pari passu* in right of payment with all existing and future Senior Indebtedness of such Guarantor, if any.

Each payment to be made by a Guarantor in respect of its Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

Section 10.02. Limitation on Guarantor Liability. Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law or being void or voidable under any law relating to insolvency of debtors.

Section 10.03. Execution and Delivery. To evidence its Guarantee set forth in Section 10.01 hereof, each Guarantor hereby agrees that this Indenture (or a supplemental indenture in the form of Exhibit D) shall be executed on behalf of such Guarantor by one of its authorized officers.

Each Guarantor hereby agrees that its Guarantee set forth in Section 10.01 hereof shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

If an officer whose signature is on this Indenture (or a supplemental indenture in the form of Exhibit D) no longer holds that office at the time the Trustee authenticates a Note, the Guarantee of such Guarantor shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

If required by Section 4.15 hereof, Parent shall cause any newly created or acquired Restricted Subsidiary to comply with the provisions of Section 4.15 hereof and this Article 10, to the extent applicable.

Section 10.04. Subrogation. Each Guarantor shall be subrogated to all rights of Holders against the Issuer in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 10.01 hereof; *provided* that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuer under this Indenture or the Notes shall have been paid in full.

Section 10.05. Benefits Acknowledged. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

Section 10.06. Release of Guarantees. Each Guarantee by a Guarantor (other than the Guarantee by Parent except pursuant to clause (a)(iv) below) shall be automatically and unconditionally released and discharged and shall thereupon terminate and be of no further force and effect, and no further action by such Guarantor, the Issuer or the Trustee is required for the release of such Guarantor's Guarantee, upon:

- (a) (i) (A) any sale, exchange, disposition or transfer (by merger, amalgamation,

consolidation or otherwise) of (x) the Capital Stock of such Guarantor after which the applicable Guarantor is no longer a Restricted Subsidiary or (y) all of the assets of such Guarantor or (B) consummation of any other transaction following which such Guarantor is no longer a Restricted Subsidiary, in each case if such sale, exchange, disposition, transfer or other transaction is made in compliance with the applicable provisions of this Indenture;

(ii) the release or discharge of the guarantee by such Guarantor of Indebtedness under the Senior Secured Credit Facilities, or the release or discharge of such other guarantee that resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee (it being understood that a release subject to a contingent reinstatement is considered a release, and that if any such Guarantee is so reinstated, such Guarantee shall also be reinstated to the extent that such Guarantor would then be required to provide a Guarantee pursuant to Section 4.15 hereof); (iii) the designation of any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary in compliance with the applicable provisions of this Indenture; or (iv) the exercise by the Issuer of its Legal Defeasance option or Covenant Defeasance option in accordance with Article 8 hereof or the discharge of the Issuer's obligations under this Indenture in accordance with the terms of this Indenture; and

(b) such Guarantor delivering to the Trustee an Officer's Certificate of such Guarantor or the Issuer and an Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

ARTICLE 11 SATISFACTION AND DISCHARGE

Section 11.01. *Satisfaction and Discharge.* This Indenture shall be discharged and shall cease to be of further effect as to all Notes, when either:

(a) all Notes theretofore authenticated and delivered, except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has heretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(b) (i) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer, and the Issuer or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, U.S. dollar-denominated U.S. Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption; (ii) no Default (other than that resulting from borrowing funds to be applied to make such deposit or any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith) with respect to this Indenture or the Notes shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, the Senior Secured Credit Facilities or any other material agreement or instrument (other than this Indenture) to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound (other than resulting from any borrowing of funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith); (iii) the Issuer has paid or caused to be paid all sums then payable by it under this Indenture; and (iv) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the

Notes at maturity or the Redemption Date, as the case may be.

In addition, the Issuer must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied. Such Opinion of Counsel may rely on such Officer's Certificate as to matters of fact, including clauses (b)(i), (ii), (iii) and (iv) above.

Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to subclause (i) of clause (b) of this Section 11.01, the provisions of Section 11.02 and Section 8.06 hereof shall survive such satisfaction and discharge.

Section 11.02. *Application of Trust Money.* Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 11.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer or a Guarantor acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Securities in accordance with Section 11.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 hereof; *provided*, that if the Issuer has made any payment of principal of, premium, if any, or interest on any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders to receive such payment from the money or U.S. Government Securities held by the Trustee or Paying Agent.

ARTICLE 12 MISCELLANEOUS

Section 12.01. *Trust Indenture Act Controls.* If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Trust Indenture Act Section 318(c), the imposed duties shall control.

Section 12.02. *Notices.* Any notice or communication by the Issuer, any Guarantor or the Trustee to the others is duly given if in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), facsimile, electronic mail or other electronic transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuer and/or any Guarantor:

Prestige Brands, Inc.
90 North Broadway
Irvington, New York 10533
Facsimile: (914) 524-6821
Attention: Ronald Lombardi

With a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Facsimile: (212) 446-6460
Attention: Joshua N. Korff

If to the Trustee:

U.S. Bank National Association
EP-MN-WS3C
60 Livingston Avenue
St. Paul, Minnesota 55107
Facsimile: (651) 495-8097
Attention: Corporate Trust Services

The Issuer, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; when receipt is acknowledged, if faxed or sent electronically; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; *provided*, that any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof and, subject to compliance with the Trust Indenture Act, on the final date on which publication is made, if given by publication.

Any notice or communication to a Holder shall be electronically delivered, mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the Note Register kept by the Registrar. Any notice or communication shall also be so delivered or mailed to any Person described in Trust Indenture Act Section 313(c), to the extent required by the Trust Indenture Act. Failure to deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed or otherwise delivered in the manner provided above within the time prescribed, such notice or communication shall be deemed duly given, whether or not the addressee receives it.

If the Issuer delivers or mails a notice or communication to Holders, it shall deliver or mail a copy to the Trustee and each Agent at the same time.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event or any other communication (including any notice of redemption or repurchase) to a holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with accepted practices at the Depositary.

Section 12.03. Communication by Holders with Other Holders. Holders may communicate pursuant to Trust Indenture Act Section 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Issuer, the Trustee, the Registrar and anyone else shall have the protection of Trust Indenture Act Section 312(c).

Section 12.04. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuer or any of the Guarantors to the Trustee to take any action under this Indenture, the Issuer or such Guarantor, as the case may be, shall furnish to the Trustee:

(a) An Officer's Certificate in form reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) An Opinion of Counsel in form reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 12.05. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 4.04 hereof or Trust Indenture Act Section 314(a)(4)) shall comply with the provisions of Trust Indenture Act Section 314(e) and shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officer's Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with; *provided, however,* that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Section 12.06. Rules by Trustee and Agents. The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 12.07. No Personal Liability of Directors, Officers, Employees and Stockholders. No past, present or future director, officer, employee, incorporator, member, partner or stockholder of the Issuer or any Guarantor shall have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Guarantees or this Indenture or any supplemental indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 12.08. Governing Law. THIS INDENTURE, THE NOTES AND ANY GUARANTEE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 12.09. Waiver of Jury Trial. EACH OF THE ISSUER, THE GUARANTORS, AND THE TRUSTEE (1) AGREE TO SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT LOCATED IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE OR THE NOTES AND (2) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.10. Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

Section 12.11. No Adverse Interpretation of Other Agreements. This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer or its Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 12.12. Successors. All agreements of the Issuer in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 10.06 hereof.

Section 12.13. Severability. In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.14. Counterpart Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This Indenture may be executed in multiple counterparts which, when taken together, shall constitute one instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmissions shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 12.15. Table of Contents, Headings, etc. The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 12.16. Qualification of Indenture. The Issuer and the Guarantors shall qualify this Indenture under the Trust Indenture Act in accordance with the terms and conditions of the Registration Rights Agreement and shall pay all reasonable costs and expenses (including attorneys' fees and expenses for the Issuer, the Guarantors and the Trustee) incurred in connection therewith, including, but not limited to, costs and expenses of qualification of this Indenture and the Notes and printing this Indenture and the Notes. The Trustee shall be provided with such Officer's Certificates, Opinions of Counsel or other documentation as it may reasonably request and as is necessary in connection with any such qualification of this Indenture under the Trust Indenture Act.

Section 12.17. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act (the "Patriot Act"), the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they shall provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the Patriot Act.

[Signatures on following page]

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

PRESTIGE BRANDS, INC.

By: /s/ Ron Lombardi

Name: Ronald M. Lombardi

Title: Chief Financial Officer

Guarantors:

PRESTIGE BRANDS HOLDINGS, INC.

PRESTIGE PERSONAL CARE HOLDINGS, INC.

PRESTIGE PERSONAL CARE, INC.

PRESTIGE SERVICES CORP.

PRESTIGE BRANDS HOLDINGS, INC.

PRESTIGE BRANDS INTERNATIONAL, INC.

MEDTECH HOLDINGS, INC.

MEDTECH PRODUCTS INC.

THE CUTEX COMPANY

THE DENOREX COMPANY

THE SPIC AND SPAN COMPANY

BLACKSMITH BRANDS, INC.

By: /s/ Ron Lombardi

Name: Ronald M. Lombardi

Title: Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ Raymond S. Haverstock

Name: Raymond S. Haverstock

Title: Vice President

Date: January 31, 2012

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Regulation S Temporary Global Note Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP [74112B AG0] [U7410F AD4]
ISIN [US74112BAG05] [USU7410FAD43]

[RULE 144A][REGULATION S] [GLOBAL] NOTE
representing up to
\$[]
8.125% Senior Note due 2020

No. ____ [\$_____]

Prestige Brands, Inc., a Delaware corporation, promises to pay to _____ or registered assigns the principal sum [set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto] [of _____ United States Dollars] on February 1, 2020.

Interest Payment Dates: February 1 and August 1, commencing on August 1, 2012

Record Dates: January 15 and July 15

IN WITNESS HEREOF, the Issuer has caused this instrument to be duly executed.

Dated:

PRESTIGE BRANDS, INC.

By: _____
Name:
Title:

This is one of the Notes referred to in the within-mentioned Indenture:

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____

Name:

Title:

Date:

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. *Interest.* Prestige Brands, Inc., a Delaware corporation, promises to pay interest on the principal amount of this Note at a rate per annum of 8.125% from January 31, 2012 until maturity and to pay the Additional Interest, if any, payable pursuant to the Registration Rights Agreement referred to below. The Issuer will pay interest on this Note semi-annually in arrears on February 1 and August 1 of each year, beginning August 1, 2012, or, if any such day is not a Business Day, on the next succeeding Business Day (each, an “**Interest Payment Date**”). The Issuer will make each interest payment to the Holder of record of this Note on the immediately preceding January 15 and July 15 (each, a “**Record Date**”). Interest on this Note will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from and including January 31, 2012. The Issuer will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the rate borne by this Note; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the rate borne by this Note. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. *Method of Payment.* The Issuer will pay interest on this Note to the Person who is the registered Holder of this Note at the close of business on the Record Date (whether or not a Business Day) next preceding the Interest Payment Date, even if this Note is cancelled after such Record Date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. Cash payments of principal of, premium, if any, and interest on the Notes will be payable at the office or agency of the Issuer maintained for such purpose pursuant to Section 4.02 of the Indenture or, at the option of the Issuer, cash payment of interest may be made through the Paying Agent by check mailed to the Holders at their respective addresses set forth in the Note Register of Holders, *provided*, that (a) all cash payments of principal, premium, if any, and interest with respect to the Notes represented by Global Notes registered in the name of or held by DTC or its nominee will be made through the Paying Agent by wire transfer of immediately available funds to the accounts specified by the registered Holder or Holders thereof and (b) all cash payments of principal, premium, if any, and interest with respect to certificated Notes will be made by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion). Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

3. *Paying Agent, Transfer Agent and Registrar.* Initially, U.S. Bank National Association, the Trustee under the Indenture, will act as Paying Agent, Transfer Agent and Registrar. The Issuer may change any Paying Agent, Transfer Agent or Registrar without prior notice to the Holders. The Issuer or any of its Subsidiaries may act in any such capacity.

4. *Indenture.* The Issuer issued the Notes under an Indenture, dated as of January 31, 2012 (as amended, supplemented or otherwise modified from time to time, the “**Indenture**”), among Prestige Brands, Inc., the Guarantors from time to time party thereto and the Trustee. This Note is one of a duly authorized issue of notes of the Issuer designated as its 8.125% Senior Notes due 2020. The Issuer shall be entitled to issue Additional Notes pursuant to Sections 2.01 and 4.09 of the Indenture. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Trust Indenture Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

5. *Optional Redemption.*

(a) Except as described below under clauses 5(b), 5(c) and 5(d) hereof and in clauses (a) through (c) of Section 3.07 of the Indenture, the Notes will not be redeemable at the Issuer's option prior to February 1, 2016.

(b) At any time prior to February 1, 2016, the Issuer may on one or more occasions redeem all or a part of the Notes upon notice in accordance with Section 3.03 of the Indenture, at a redemption price equal to the sum of (i) 100.0% of the principal amount of the Notes redeemed, plus (ii) the Applicable Premium as of the date of redemption (the "**Redemption Date**"), plus (iii) accrued and unpaid interest, if any, to the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(c) On and after February 1, 2016, the Issuer may redeem the Notes, in whole or in part, upon notice in accordance with Section 3.03 of the Indenture, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest, if any, thereon to the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the twelve-month period beginning on February 1 of each of the years indicated below:

Year	Percentage
2016	104.063%
2017	102.031%
2018 and thereafter	100%

(d) Until February 1, 2015, the Issuer may, at its option, and on one or more occasions, redeem up to 35.0% of the aggregate principal amount of Notes issued under the Indenture at a redemption price equal to 108.125% of the aggregate principal amount thereof, plus accrued and unpaid interest, if any, to the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, with the net cash proceeds received by it from one or more Equity Offerings or a contribution to the Issuer's common equity capital made with the net cash proceeds of a concurrent Equity Offering; *provided*, that (A) at least 65.0% of the aggregate principal amount of Notes originally issued under the Indenture on the Issue Date and any Additional Notes issued under the Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption; and (B) each such redemption occurs within 180 days of the date of closing of each such Equity Offering.

In addition to any redemption pursuant to this paragraph 5, the Issuer may at any time and from time to time purchase Notes in the open market or otherwise.

(e) Any redemption pursuant to this paragraph 5 shall be made pursuant to the provisions of Sections 3.01 through 3.06 of the Indenture. Notice of any redemption, whether in connection with an Equity Offering or otherwise, may be given prior to the completion thereof, and any such redemption or notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering. If any Notes are listed on an exchange, and the rules of such exchange so require, the Issuer shall notify the exchange of any such notice of redemption. In addition, the Issuer shall notify the exchange of the principal amount of any Notes outstanding following any partial redemption of such Notes.

6. *Mandatory Redemption.* The Issuer shall not be required to make any mandatory redemption or sinking fund payments with respect to the Notes.

7. *Notice of Redemption.* Subject to Section 3.03 of the Indenture, notice of redemption shall be delivered electronically or mailed by first-class mail, postage prepaid, at least 30 but not more than 60 days before the Redemption Date to each Holder whose Notes are to be redeemed at such Holder's registered address or otherwise in accordance with the Applicable Procedures, except that redemption notices may be delivered electronically or mailed more than 60 days prior to a Redemption Date if the notice is issued in connection with Article 8 or Article 11 of the Indenture. No Notes of less than \$2,000 and integral multiples of \$1,000 in excess thereof can be redeemed or purchased in part, except that if all the Notes of a Holder are to be redeemed or purchased, the entire amount of Notes held by such Holder even if not in a principal amount of at least \$2,000 or an integral multiple thereof, shall be redeemed or purchased. On and after the Redemption Date, interest ceases to accrue on this Note or portions thereof called for redemption.

8. *Offers to Repurchase.* Upon the occurrence of a Change of Control, the Issuer shall make a Change of Control Offer in accordance with Section 4.14 of the Indenture. In connection with certain Asset Sales, the Issuer shall make an Asset Sale Offer as and when provided in accordance with Sections 3.09 and 4.10 of the Indenture.

9. *Denominations, Transfer, Exchange.* The Notes are in registered form without coupons in denominations of \$2,000 and any integral multiple of \$1,000 in excess of \$2,000. The transfer of Notes shall be registered and Notes may only be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuer may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuer need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part; *provided*, that new Notes will only be issued in denominations of \$2,000 and integral multiples of \$1,000 in excess of \$2,000. Also, the Issuer need not exchange or register the transfer of any Notes for a period of 15 days before the mailing of a notice of redemption of Notes to be redeemed.

10. *Persons Deemed Owners.* The registered Holder of a Note shall be treated as its owner for all purposes. Only registered Holders shall have rights hereunder.

11. *Amendment, Supplement and Waiver.* The Indenture, the Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

12. *Defaults and Remedies.* The Events of Default relating to the Notes are defined in Section 6.01 of the Indenture. If any Event of Default (other than an Event of Default of the type specified in clause (vi) or (vii) of Section 6.01(a) of the Indenture) occurs and is continuing under the Indenture, the Trustee or the Holders of at least 25.0% in principal amount of the then total outstanding Notes may, by notice to the Issuer and the Trustee, in either case specifying in such notice the respective Event of Default and that such notice is a "notice of acceleration," declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising under clause (vi) or (vii) of Section 6.01(a) of the Indenture, all outstanding Notes will become due and payable without further action or notice. Holders may not enforce the Indenture, the Notes or the Guarantees except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee (with a copy to the Issuer, *provided*, that any waiver or rescission under Section 6.04 of the Indenture shall be valid and binding notwithstanding the failure to provide a copy of such notice to the Issuer) may on behalf of all the Holders waive any existing Default and its consequences under the Indenture (except a continuing Default in payment of the principal of, premium, if any, or interest on, any of the Notes held by a non-consenting Holder) (including in connection with an Asset Sale Offer or a Change of Control Offer) and rescind any acceleration with respect to the Notes and its consequences under the Indenture

(except if such rescission would conflict with any judgment of a court of competent jurisdiction). The Issuer is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuer is required, within ten Business Days after becoming aware of any Default, to deliver to the Trustee a statement specifying such Default and what action the Issuer proposes to take with respect thereto.

13. *Authentication.* This Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of the Trustee.

14. *Additional Rights of Holders of Restricted Global Notes and Restricted Definitive Notes.* In addition to the rights provided to Holders under the Indenture, Holders of Restricted Global Notes and Restricted Definitive Notes shall have all the rights set forth in the Registration Rights Agreement, including the right to receive Additional Interest (as defined in the Registration Rights Agreement).

15. *Governing Law.* THE INDENTURE, THIS NOTE AND ANY GUARANTEE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

16. *CUSIP Numbers and ISINs.* Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused CUSIP numbers and ISINs to be printed on the Notes and the Trustee may use CUSIP numbers and ISINs in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Issuer will furnish to any Holder upon written request and without charge a copy of the Indenture and/or the Registration Rights Agreement. Requests may be made to the Issuer at the following address:

Prestige Brands, Inc.
90 North Broadway
Irvington, New York 10533
Facsimile: (914) 524-6821
Attention: Ronald Lombardi

With a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Facsimile: (212) 446-6460
Attention: Joshua N. Korff

If to the Trustee:

U.S. Bank National Association
EP-MN-WS3C
60 Livingston Avenue
St. Paul, Minnesota 55107
Facsimile: (651) 495-8097
Attention: Corporate Trust Services

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____
(Insert assignee's legal name)

(Insert assignee's soc. sec. or tax I.D. no.)

—
—
—

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuer pursuant to Section 4.10 or 4.14 of the Indenture, check the appropriate box below:

Section 4.10 Section 4.14

If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased:

\$ _____

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Tax Identification No.: _____

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The initial outstanding principal amount of this Global Note is \$_____. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian
------------------	---	---	---	--

* This schedule should be included only if the Note is issued in global form.

FORM OF CERTIFICATE OF TRANSFER

Prestige Brands, Inc.
 90 North Broadway
 Irvington, New York 10533
 Facsimile: (914) 524-6821
 Attention: Ronald Lombardi

With a copy to:

Kirkland & Ellis LLP
 601 Lexington Avenue
 New York, NY 10022
 Facsimile: (212) 446-6460
 Attention: Joshua N. Korff

If to the Trustee:

U.S. Bank National Association
 EP-MN-WS3C
 St. Paul, Minnesota 55107
 Facsimile: (651) 495-8097
 Attention: Corporate Trust Services

60 Livingston Avenue

Re: 8.125% Senior Notes due 2020

Reference is hereby made to the Indenture, dated as of January 31, 2012 (as amended, supplemented or otherwise modified from time to time, the "**Indenture**"), among Prestige Brands, Inc., the Guarantors from time to time party thereto and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "**Transferor**") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of \$_____ in such Note[s] or interests (the "**Transfer**"), to (the "**Transferee**"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE RELEVANT 144A GLOBAL NOTE OR RELEVANT DEFINITIVE NOTE PURSUANT TO RULE 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "**Securities Act**"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified

institutional buyer” within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States.

2. CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE RELEVANT REGULATION S GLOBAL NOTE OR RELEVANT DEFINITIVE NOTE PURSUANT TO REGULATION S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the applicable Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Indenture and the Securities Act.

3. CHECK AND COMPLETE IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE RELEVANT DEFINITIVE NOTE PURSUANT TO ANY PROVISION OF THE SECURITIES ACT OTHER THAN RULE 144A OR REGULATION S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act; or

(b) such Transfer is being effected to the Issuer or a subsidiary thereof; or

(c) such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act.

4. CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE OR OF AN UNRESTRICTED DEFINITIVE NOTE.

(a) CHECK IF TRANSFER IS PURSUANT TO RULE 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) CHECK IF TRANSFER IS PURSUANT TO REGULATION S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the

terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) CHECK IF TRANSFER IS PURSUANT TO OTHER EXEMPTION. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuer.

[Insert Name of Transferor]

By: _____

Name:

Title:

Dated: _____

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) a beneficial interest in the:

(i) 144A Global Note ([CUSIP:]), or

(ii) Regulation S Global Note ([CUSIP:]), or

(b) a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) a beneficial interest in the:

(i) 144A Global Note ([CUSIP:]), or

(ii) Regulation S Global Note ([CUSIP:])or

(iii) Unrestricted Global Note ([][]); or

(b) a Restricted Definitive Note; or

(c) an Unrestricted Definitive Note, in accordance with the terms of the Indenture.

FORM OF CERTIFICATE OF EXCHANGE

Prestige Brands, Inc.
 90 North Broadway
 Irvington, New York 10533
 Facsimile: (914) 524-6821
 Attention: Ronald Lombardi

With a copy to:

Kirkland & Ellis LLP
 601 Lexington Avenue
 New York, NY 10022
 Facsimile: (212) 446-6460
 Attention: Joshua N. Korff

If to the Trustee:

U.S. Bank National Association
 EP-MN-WS3C
 St. Paul, Minnesota 55107
 Facsimile: (651) 495-8097
 Attention: Corporate Trust Services
 60 Livingston Avenue

Re: 8.125% Senior Notes due 2020

Reference is hereby made to the Indenture, dated as of January 31, 2012 (as amended, supplemented or otherwise modified from time to time, the "**Indenture**"), among Prestige Brands, Inc., the Guarantors from time to time party thereto and the Trustee.

_____ (the "**Owner**") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of \$ _____ in such Note[s] or interests (the "**Exchange**"). In connection with the Exchange, the Owner hereby certifies that:

1. EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN A RESTRICTED GLOBAL NOTE FOR UNRESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN AN UNRESTRICTED GLOBAL NOTE

(a) CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the "**Securities Act**"), (iii)

the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b) CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c) CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(d) CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2. EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES FOR RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES

(a) CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO RESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the 144A Global Note Regulation S Global Note in each case, with an equal principal amount, the Owner hereby certifies (i) the

beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuer and are dated

[Insert Name of Transferor]

By: _____

Name:

Title:

Dated: _____

[FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS]

Supplemental Indenture (this "**Supplemental Indenture**"), dated as of _____, among _____ (the "**Guaranteeing Subsidiary**"), a subsidiary of Prestige Brands, Inc., a Delaware corporation (the "**Issuer**"), and U.S. Bank National Association, a national banking association, as trustee (the "**Trustee**").

W I T N E S S E T H

WHEREAS, the Issuer has heretofore executed and delivered to the Trustee an Indenture (the "**Indenture**"), dated as of January 31, 2012, providing for the issuance of an unlimited aggregate principal amount of 8.125% Senior Notes due 2020 (the "**Notes**");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the "**Guarantee**"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

(1) Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) Agreement to Guarantee. The Guaranteeing Subsidiary acknowledges that it has received and reviewed a copy of the Indenture and all other documents it deems necessary to review in order to enter into this Supplemental Indenture, and acknowledges and agrees to (i) join and become a party to the Indenture as indicated by its signature below; (ii) be bound by the Indenture, as of the date hereof, as if made by, and with respect to, each signatory hereto; and (iii) perform all obligations and duties required of a Guarantor pursuant to the Indenture. The Guaranteeing Subsidiary hereby agrees to provide an unconditional Guarantee on the terms and subject to the conditions set forth in the Indenture, including, but not limited to, Article 10 thereof.

(3) Execution and Delivery. The Guaranteeing Subsidiary agrees that the Guarantee shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

(4) No Recourse Against Others. No past, present or future director, officer, employee, incorporator, member, partner or stockholder of the Issuer or any Guaranteeing Subsidiary (other than the Issuer and the Guarantors) shall have any liability for any obligations of the Issuer or the Guarantors (including the Guaranteeing Subsidiary) under the Notes, any Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting Notes waives and

releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

(5) Governing Law. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(6) Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This Supplemental Indenture may be executed in multiple counterparts which, when taken together, shall constitute one instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmissions shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

(7) Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

(8) The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

(9) Benefits Acknowledged. The Guaranteeing Subsidiary's Guarantee is subject to the terms and conditions set forth in the Indenture. The Guaranteeing Subsidiary acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and this Supplemental Indenture and that the guarantee and waivers made by it pursuant to this Guarantee are knowingly made in contemplation of such benefits.

(10) Successors. All agreements of the Guaranteeing Subsidiary in this Supplemental Indenture shall bind its Successors, except as otherwise provided in this Supplemental Indenture. All agreements of the Trustee in this Supplemental Indenture shall bind its successors.

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

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

PURCHASE AGREEMENT

Prestige Brands, Inc.
\$250,000,000
8.125% Senior Notes due 2020

January 24, 2012

MORGAN STANLEY & CO. LLC
CITIGROUP GLOBAL MARKETS INC.
RBC CAPITAL MARKETS, LLC
As Representatives of the Initial Purchasers
c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

Ladies and Gentlemen:

Introductory. Prestige Brands, Inc. (the “**Company**”), a Delaware corporation and a direct wholly-owned subsidiary of Prestige Brands Holdings, Inc. (“**Parent**”), proposes to issue and sell to the several Initial Purchasers named in Schedule A (each an “**Initial Purchaser**” and together, the “**Initial Purchasers**”), acting severally and not jointly, the respective amounts set forth in such Schedule A of \$250,000,000 aggregate principal amount of the Company’s 8.125% Senior Notes due 2020 (the “**Notes**”). Morgan Stanley & Co. LLC (“**Morgan Stanley**”), Citigroup Global Markets Inc. (“**Citi**”) and RBC Capital Markets, LLC have agreed to act as the representatives of the several Initial Purchasers (in such capacity, the “**Representatives**”) in connection with the offering and sale of the Notes.

The Securities (as defined below) will be issued pursuant to an indenture to be dated as of January 31, 2012 (the “**Indenture**”), among the Company, the Guarantors (as defined below) and U.S. Bank National Association, as trustee (the “**Trustee**”). Notes will be issued only in book-entry form in the name of Cede & Co., as nominee of The Depository Trust Company (the “**Depository**”) pursuant to a rider to a blanket letter of representations to be dated on or before the Closing Date (as defined in Section 2 hereof) (the “**DTC Agreement**”), among the Company, the Trustee and the Depository.

The Company has previously issued \$250,000,000 in aggregate principal amount of its 8.25% Senior Notes due 2018 (the “**Existing Notes**”) pursuant to an indenture, dated as of March 24, 2010, between the Company, Parent, the guarantors party thereto and U.S. Bank National Association, as trustee (the “**Trustee**”), as supplemented by that first supplemental indenture, dated as of November 1, 2010, between the Company, Parent, the guarantors listed on the signature pages thereto and the Trustee (as supplemented, the “**Existing Notes Indenture**”).

The holders of the Notes will be entitled to the benefits of a registration rights agreement to be dated as of January 31, 2012 (the “**Registration Rights Agreement**”), among the Company, the

Guarantors and the Initial Purchasers, pursuant to which the Company and the Guarantors will agree to file with the Commission (as defined below), under the circumstances set forth therein, (i) a registration statement under the Securities Act (as defined below) relating to another series of debt securities of the Company with terms substantially identical to the Notes (the “**Exchange Notes**”) to be offered in exchange for the Notes (the “**Exchange Offer**”) and (ii) a shelf registration statement pursuant to Rule 415 of the Securities Act relating to the resale by certain holders of the Notes, and in each case, to use its commercially reasonable efforts to cause such registration statements to be declared effective. All references herein to the Exchange Notes and the Exchange Offer are only applicable if the Company and the Guarantors are in fact required to consummate the Exchange Offer pursuant to the terms of the Registration Rights Agreement.

The payment of principal of, premium, if any, and interest on the Notes will be fully and unconditionally guaranteed on a senior unsecured basis, jointly and severally by (i) Parent and the subsidiary guarantors listed on the signature pages hereof as “Guarantors” and (ii) any subsidiary of the Company formed or acquired after the Closing Date that executes an additional guarantee in accordance with the terms of the Indenture, and their respective successors and assigns (the entities described in clauses (i) and (ii), collectively, the “**Guarantors**”), pursuant to their guarantees (the “**Guarantees**”). The Notes and the Guarantees attached thereto are herein collectively referred to as the “**Securities**”; and the Exchange Notes and the Guarantees attached thereto are herein collectively referred to as the “**Exchange Securities**.”

In connection with the issuance of the Securities, the Company (i) will pay in full all amounts outstanding (including all accrued and unpaid interest) and terminate all commitments under its senior secured credit facility dated as of March 24, 2010, as amended (the “**Existing Credit Facility**”), and (ii) will enter into (I) a new senior secured term loan facility (the “**New Secured Term Loan Facility**”) and (II) a new asset-based revolving credit facility (the “**New ABL Revolving Credit Facility**”), together with the New Secured Term Loan Facility, the “**New Credit Facilities**”), among the Company, as borrower thereunder, Citibank, N.A. as Administrative Agent, and the lenders and guarantors party thereto. The net proceeds from the sale of the Securities, together with borrowings under the New Credit Facilities and cash on hand will be used to repay all amounts outstanding under the Existing Credit Facility and terminate the associated credit agreement and to finance the acquisition of certain OTC healthcare assets (the “**GSK Brands**”) by Parent pursuant to the Business Sale and Purchase Agreement I, dated December 20, 2011, by and among GlaxoSmithKline LLC, GlaxoSmithKline plc, certain other parties thereto and Parent (the “**BSPA I**”) and pursuant to the Business Sale and Purchase Agreement II, dated December 20, 2011, by and among GlaxoSmithKline LLC, GlaxoSmithKline plc, certain other parties thereto and Parent (the “**BSPA II**”), together with the BSPA I, the “**Acquisition Agreements**”), and to pay related fees and expenses.

Additionally, the Company will cause the Existing Notes to be equally and ratably secured with the New Secured Term Loan Facility.

The Company understands that the Initial Purchasers propose to make an offering of the Securities on the terms and in the manner set forth herein and in the Pricing Disclosure Package (as defined below) and agrees that the Initial Purchasers may resell, subject to the conditions set forth herein, all or a portion of the Securities to purchasers (the “**Subsequent Purchasers**”) on the terms set forth in the Pricing Disclosure Package (the first time at which sales of the Securities are made is referred to as the “**Time of Sale**”). The Securities are to be offered and sold to or through the Initial Purchasers without being registered with the Securities and Exchange Commission (the “**Commission**”) under the Securities

Act of 1933 (as amended, the “**Securities Act**,” which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder), in reliance upon exemptions therefrom. Pursuant to the terms of the Securities and the Indenture, investors who acquire Securities shall be deemed to have agreed that Securities may only be resold or otherwise transferred, after the date hereof, if such Securities are registered for sale under the Securities Act or if an exemption from the registration requirements of the Securities Act is available (including the exemptions afforded by Rule 144A under the Securities Act (“**Rule 144A**”) or Regulation S under the Securities Act (“**Regulation S**”)).

The Company has prepared and delivered to each Initial Purchaser copies of a Preliminary Offering Memorandum, dated January 18, 2012 (the “**Preliminary Offering Memorandum**”), and has prepared and delivered to each Initial Purchaser copies of a Pricing Supplement, dated January 24, 2012 (the “**Pricing Supplement**”), describing the terms of the Securities, each for use by such Initial Purchaser in connection with its solicitation of offers to purchase the Securities. The Preliminary Offering Memorandum and the Pricing Supplement, including those documents incorporated by reference therein, are herein referred to as the “**Pricing Disclosure Package**.” Promptly after this Agreement is executed and delivered, the Company will prepare and deliver to each Initial Purchaser a final offering memorandum dated the date hereof (the “**Final Offering Memorandum**”).

All references herein to the terms “Pricing Disclosure Package” and “Final Offering Memorandum” shall be deemed to mean and include all information filed under the Securities Exchange Act of 1934 (as amended, the “**Exchange Act**,” which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder) prior to the Time of Sale and incorporated by reference in the Pricing Disclosure Package (including the Preliminary Offering Memorandum) or the Final Offering Memorandum (as the case may be), and all references herein to the terms “**amend**,” “**amendment**” or “**supplement**” with respect to the Final Offering Memorandum shall be deemed to mean and include all information filed under the Exchange Act after the Time of Sale and incorporated by reference in the Final Offering Memorandum.

The Company hereby confirms its agreements with the Initial Purchasers as follows:

SECTION 1. Representations and Warranties. Each of the Company and the Guarantors, jointly and severally, hereby represents, warrants and covenants to each Initial Purchaser that, as of the date hereof and as of the Closing Date (references in this Section 1 to the “**Offering Memorandum**” are to (x) the Pricing Disclosure Package in the case of representations and warranties made as of the date hereof and (y) the Final Offering Memorandum in the case of representations and warranties made as of the Closing Date):

(a) **No Registration Required.** Subject to compliance by the Initial Purchasers with the representations and warranties set forth in Section 2 hereof and with the procedures set forth in Section 7 hereof, it is not necessary in connection with the offer, sale and delivery of the Securities to the Initial Purchasers and to each Subsequent Purchaser in the manner contemplated by this Agreement and the Offering Memorandum to register the Securities under the Securities Act or, until such time as the Exchange Securities are issued pursuant to an effective registration statement, to qualify the Indenture under the Trust Indenture Act of 1939 (the “**Trust Indenture Act**,” which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder).

(b) **No Integration of Offerings or General Solicitation.** None of the Company, its

affiliates (as such term is defined in Rule 501 under the Securities Act, hereinafter an “**Affiliate**”), or any person acting on its or any of their behalf (other than the Initial Purchasers, as to whom the Company makes no representation or warranty) has, directly or indirectly, solicited any offer to buy or offered to sell, or will, directly or indirectly, solicit any offer to buy or offer to sell, in the United States or to any United States citizen or resident, any security which is or would be integrated with the sale of the Securities in a manner that would require the Securities to be registered under the Securities Act. None of the Company, its Affiliates, or any person acting on its or any of their behalf (other than the Initial Purchasers, as to whom the Company makes no representation or warranty) has engaged or will engage, in connection with the offering of the Securities, in any form of general solicitation or general advertising within the meaning of Rule 502 under the Securities Act. With respect to those Securities sold in reliance upon Regulation S, (i) none of the Company, its Affiliates or any person acting on its or their behalf (other than the Initial Purchasers, as to whom the Company makes no representation or warranty) has engaged or will engage in any directed selling efforts within the meaning of Regulation S and (ii) each of the Company and its Affiliates and any person acting on its or their behalf (other than the Initial Purchasers, as to whom the Company makes no representation or warranty) has complied and will comply with the offering restrictions set forth in Regulation S.

(c) **Eligibility for Resale under Rule 144A.** The Securities are eligible for resale pursuant to Rule 144A and will not be, at the Closing Date, of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated interdealer quotation system.

(d) **The Pricing Disclosure Package and Offering Memorandum.** Neither the Pricing Disclosure Package, as of the Time of Sale, nor the Final Offering Memorandum, as of its date or (as amended or supplemented in accordance with Section 3(a), as applicable) as of the Closing Date, contains or represents an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that this representation, warranty and agreement shall not apply to statements in or omissions from the Pricing Disclosure Package, the Final Offering Memorandum or any amendment or supplement thereto made in reliance upon and in conformity with information furnished to the Company in writing by any Initial Purchaser through the Representatives expressly for use in the Pricing Disclosure Package, the Final Offering Memorandum or any amendment or supplement thereto, as the case may be. The Pricing Disclosure Package contains, and the Final Offering Memorandum will contain, all the information specified in, and meeting the requirements of, Rule 144A. The Company has not distributed and will not distribute, prior to the later of the Closing Date and the completion of the Initial Purchasers’ distribution of the Securities, any offering material in connection with the offering and sale of the Securities other than the Pricing Disclosure Package and the Final Offering Memorandum.

(e) **Company Additional Written Communications.** The Company has not prepared, made, used, authorized, approved or distributed and will not prepare, make, use, authorize, approve or distribute any written communication that constitutes an offer to sell or solicitation of an offer to buy the Securities other than (i) the Pricing Disclosure Package, (ii) the Final Offering Memorandum and (iii) any electronic road show or other written communications, in each case used in accordance with Section 3(a). Each such communication by the Company or its agents and representatives pursuant to clause (iii) of the preceding sentence (each, a

“**Company Additional Written Communication**”), when taken together with the Pricing Disclosure Package, did not as of the Time of Sale, and at the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that this representation, warranty and agreement shall not apply to statements in or omissions from each such Company Additional Written Communication made in reliance upon and in conformity with information furnished to the Company in writing by any Initial Purchaser through the Representatives expressly for use in any Company Additional Written Communication.

(f) **Incorporated Documents.** The documents incorporated or deemed to be incorporated by reference in the Offering Memorandum at the time they were or hereafter are filed with the Commission (collectively, the “**Incorporated Documents**”) complied and will comply in all material respects with the requirements of the Exchange Act. Each such Incorporated Document, when taken together with the Pricing Disclosure Package, did not as of the Time of Sale, and at the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) **The Purchase Agreement.** This Agreement has been duly authorized, executed and delivered by the Company and each Guarantor.

(h) **The Registration Rights Agreement and DTC Agreement.** The Registration Rights Agreement has been duly authorized and, on the Closing Date, will have been duly executed and delivered by, and will constitute a valid and binding agreement of, the Company and each Guarantor, enforceable in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles and except as rights to indemnification may be limited by applicable law. The DTC Agreement has been duly authorized and, on the Closing Date, will have been duly executed and delivered by, and will constitute a valid and binding agreement of, the Company, enforceable in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

(i) **Authorization of the Notes, the Guarantees and the Exchange Notes.** The Notes to be purchased by the Initial Purchasers from the Company will on the Closing Date be in the form contemplated by the Indenture, have been duly authorized for issuance and sale pursuant to this Agreement and the Indenture and, at the Closing Date, will have been duly executed by the Company and, when authenticated in the manner provided for in the Indenture and delivered against payment of the purchase price therefor, will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles and will be entitled to the benefits of the Indenture. The Exchange Notes have been duly and validly authorized for issuance by the Company, and when issued and authenticated in accordance with the terms of the Indenture, the Registration Rights Agreement and the Exchange Offer, will constitute valid and binding obligations of the Company, enforceable against the Company in

accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting enforcement of the rights and remedies of creditors or by general principles of equity and will be entitled to the benefits of the Indenture. The Guarantees of the Notes on the Closing Date and the Guarantees of the Exchange Notes when issued will be in the respective forms contemplated by the Indenture and have been duly authorized for issuance pursuant to this Agreement and the Indenture; the Guarantees of the Notes, at the Closing Date, will have been duly executed by each of the Guarantors and, when the Notes have been authenticated in the manner provided for in the Indenture and issued and delivered against payment of the purchase price therefor, the Guarantees of the Notes will constitute valid and binding agreements of the Guarantors; and, when the Exchange Notes have been authenticated in the manner provided for in the Indenture and issued and delivered in accordance with the Registration Rights Agreement, the Guarantees of the Exchange Notes will constitute valid and binding agreements of the Guarantors, in each case, enforceable in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles and will be entitled to the benefits of the Indenture.

(j) **Authorization of the Indenture.** The Indenture has been duly authorized by the Company and each Guarantor and, at the Closing Date, will have been duly executed and delivered by the Company and each Guarantor and will constitute a valid and binding agreement of the Company and each Guarantor, enforceable against the Company and each Guarantor in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

(k) **[Reserved.]**

(l) **Description of the Securities and the Indenture.** The descriptions of the Securities, the Exchange Securities, the Indenture and the Registration Rights Agreement contained in the Offering Memorandum conform in all material respects to the terms of the Securities, the Exchange Securities, the Indenture and the Registration Rights Agreement.

(m) **No Material Adverse Effect.** Except as otherwise disclosed in the Offering Memorandum (exclusive of any amendment or supplement thereto), subsequent to the respective dates as of which information is given in the Offering Memorandum (exclusive of any amendment or supplement thereto): (i) there has been no material adverse effect, or any development that could reasonably be expected to result in a material adverse effect, on the condition (financial or otherwise), prospects, earnings, business or properties of Parent and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business (a “**Material Adverse Effect**”); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business; and (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, any of its subsidiaries on any class of capital stock or repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(n) **Independent Accountants of the Parent.** PricewaterhouseCoopers LLP (US), which expressed its opinion with respect to certain of the financial statements (which term as used in this Agreement includes the related notes thereto) and supporting schedules of Parent and Blacksmith Brands Holdings, Inc., a Delaware corporation (“**Blacksmith**”) included in the Offering Memorandum, is an independent registered public accounting firm within the meaning of the Securities Act, the Exchange Act and the rules of the Public Company Accounting Oversight Board, and any non-audit services provided by PricewaterhouseCoopers LLP (US) to the Company or any of the Guarantors have been approved by the Audit Committee of the Board of Directors of Parent. The Company has no reason to believe that PricewaterhouseCoopers LLP (UK), who certified the financial statements and supporting schedules included in the Offering Memorandum with respect to the GSK Brands were not, with respect to such financial statements and supporting schedules, independent public accountants with respect to the GSK Brands as required by the Securities Act, the Exchange Act and the Public Accounting Oversight Board.

(o) **Preparation of the Financial Statements.** Each of (i) the audited financial statements (including the notes thereto) of the Parent, (ii) the audited financial statements (including the notes thereto) of Blacksmith and its consolidated subsidiaries and (iii) the audited financial statements (including the notes thereto) of the GSK Brands, in each case, included in the Offering Memorandum present fairly in all material respects the financial position of the Parent, Blacksmith, and the GSK Brands, respectively, as of and at the dates indicated and the results of their operations and cash flows of Parent, Blacksmith and the GSK Brands, respectively, as of and at the date and for the periods specified. Such financial statements have been prepared in conformity with generally accepted accounting principles as applied in the United States applied on a consistent basis throughout the periods involved, except as otherwise expressly stated in the Offering Memorandum and the related notes to such financial statements. The financial data set forth in the Offering Memorandum under the captions “Summary–Summary Historical and Pro Forma Consolidated Financial and Other Data of Prestige Brands Holdings, Inc.” and “Summary–Summary Historical Combined Financial Data of The GSK Brands” fairly present the information set forth therein on a basis consistent with that of the applicable audited financial statements contained in the Offering Memorandum. Except as may be stated in the Offering Memorandum, the pro forma consolidated financial statements of the Company and its subsidiaries and the related notes thereto included under the captions “Summary—Summary Historical and Pro Forma Consolidated Financial and Other Data of Prestige Brands Holdings, Inc.,” “Unaudited Pro Forma Combined Financial Data” and elsewhere in the Offering Memorandum present fairly the information contained therein, have been prepared in accordance with the Commission’s rules and guidelines with respect to pro forma financial statements and have been properly presented on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transaction and circumstances referred to therein. The statistical and market-related data and forward-looking statements included or incorporated by reference in the Offering Memorandum are based on or derived from sources that Parent, the Company and their subsidiaries believe to be reliable and accurate in all material respects and represent their good faith estimates that are made on the basis of data derived from such sources.

(p) **Incorporation and Good Standing of the Company, the Guarantors and each of their Subsidiaries.** Each of the Company, the Guarantors and their respective subsidiaries has been duly incorporated or formed, as applicable, and is validly existing as a corporation, limited partnership or limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation or formation, as applicable, and has corporate, partnership or

limited liability company, as applicable, power and authority to own, lease and operate its properties and to conduct its business as described in the Offering Memorandum and, in the case of the Company and the Guarantors, to enter into and perform its obligations under each of this Agreement, the Registration Rights Agreement, the DTC Agreement, the Securities, the Exchange Securities and the Indenture. Each of the Company, the Guarantors and their respective subsidiaries is duly qualified as a foreign corporation, limited partnership or limited liability company, as applicable, to transact business and is in good standing or equivalent status in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions where the failure to so qualify or to be in good standing (i) would not reasonably be expected to have a material adverse effect on the performance of this Agreement, the Registration Rights Agreement, the DTC Agreement, the Securities, the Exchange Securities and the Indenture, or the consummation of any of the transactions contemplated hereby or thereby or (ii) would not, individually or in the aggregate, result in a Material Adverse Effect. All the outstanding shares of capital stock or limited liability company interests of each of the Company, the Guarantors and each of their respective subsidiaries have been duly authorized and validly issued and are fully paid and nonassessable and, except with respect to liens securing the Existing Notes, the Existing Credit Facility and the New Credit Facilities, and as otherwise set forth in the Offering Memorandum, all outstanding shares of capital stock or limited liability company interests of each subsidiary are owned by Parent either directly or through wholly owned subsidiaries free and clear of any security interest, mortgage, pledge, lien, encumbrance or claim. Parent does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21 to the Parent's Annual Report on Form 10-K for the fiscal year ended March 31, 2011.

(q) **Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required.** Neither the Company, the Guarantors nor any of their respective subsidiaries is (i) in violation of its charter, bylaws or other constitutive document; (ii) in default (or, with the giving of notice or lapse of time, would be in default) ("**Default**") under any indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other instrument to which the Company, any Guarantor or any of their respective subsidiaries is a party or by which it or any of them may be bound (including without limitation, the Existing Credit Facilities and the Existing Notes Indenture) or to which any of the property or assets of the Company, any Guarantor or any of their respective subsidiaries is subject (each, an "**Existing Instrument**"); or (iii) in violation under any statute, law, rule, regulation, judgment, order or decree applicable to the Company, any Guarantor or any of their respective subsidiaries of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company, any Guarantor or any such subsidiary or any of its properties, as applicable, except, in the case of clauses (ii) and (iii) above where such violation or Default, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. The Company's and each Guarantor's execution, delivery and performance of this Agreement, the Registration Rights Agreement, the DTC Agreement, the Indenture, the issuance and delivery of the Securities and the Exchange Securities, the consummation of any other of the transactions contemplated hereby and thereby and by the Offering Memorandum, and the performance by the Company or any Guarantor of its obligations hereunder or thereunder (x) have been duly authorized by all necessary corporate action and will not result in any violation of the provisions of the charter, bylaws or other constitutive document of the Company, any Guarantor or any of their respective subsidiaries, (y) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined below) under, except for the Existing Credit Facility, result in the creation or imposition of any lien, charge or encumbrance, except for liens

securing the Existing Notes and the New Credit Facilities, upon any property or assets of the Company, any Guarantor or any of their respective subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument and (z) will not result in the violation of any statute, law, rule, regulation, judgment, order or decree applicable to the Company, any Guarantor or any of their respective subsidiaries of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company, any Guarantor or any of their respective subsidiaries or any of its or their properties, as applicable, except, in the case of clauses (y) and (z) above, where such conflicts, breaches, Defaults, Debt Repayment Triggering Events, liens, charges or encumbrances, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency is required for the Company's execution, delivery and performance of this Agreement, the Registration Rights Agreement, the DTC Agreement or the Indenture, or the issuance and delivery of the Securities or the Exchange Securities, or consummation of the transactions contemplated hereby and thereby and by the Offering Memorandum, except such as have been obtained or made by the Company and are in full force and effect under the Securities Act, applicable securities laws of the several states of the United States or provinces of Canada and except such as may be required by the securities laws of the several states of the United States or provinces of Canada with respect to the Company's obligations under the Registration Rights Agreement. As used herein, a "**Debt Repayment Triggering Event**" means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Parent or any of its subsidiaries.

(r) **No Material Actions or Proceedings.** No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company, any Guarantor or any of their respective subsidiaries or properties is pending or, to the knowledge of Parent and the Company, threatened that would reasonably be expected to have a Material Adverse Effect, except as set forth in or contemplated in the Offering Memorandum (exclusive of any amendment or supplement thereto).

(s) **Intellectual Property Rights.** Parent and its subsidiaries own, possess, license or otherwise have the right to use, all patents, trademarks, service marks, trade names, copyrights, Internet domain names (in each case including all registrations and applications to register same), inventions, trade secrets, technology, know-how and other intellectual property necessary for the conduct of Parent's and its subsidiaries' business as now conducted and as currently proposed to be conducted (collectively, the "**Intellectual Property**"), except where the failure to own, possess, license or have the right to so use would not reasonably be expected to have a Material Adverse Effect. Except as set forth in the Offering Memorandum, and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) Parent or one of its subsidiaries owns, or has the right to use, all the Intellectual Property free and clear in all material respects of all adverse claims, liens or other encumbrances; (ii) to the knowledge of Parent and the Company, there is no material infringement by third parties of any such Intellectual Property; (iii) there is no pending or, to the knowledge of Parent and the Company, threatened action, suit, proceeding or claim by any third party challenging Parent's or its subsidiaries' rights in or to any such Intellectual Property, and the Company is unaware of any facts that would form a reasonable basis for any such claim; (iv) there is no pending or, to the knowledge of Parent and the Company, threatened action, suit, proceeding or claim by any third

party challenging the validity or scope of any such Intellectual Property, and the Company is unaware of any facts that would form a reasonable basis for any such claim; and (v) there is no pending or, to the knowledge of Parent and the Company, threatened action, suit, proceeding or claim by others that Parent or any subsidiary infringes or otherwise violates any patent, trademark, copyright, trade secret or other intellectual property rights of any third party, and the Company is unaware of any fact that would form a reasonable basis for any such claim.

(t) **All Necessary Permits, etc.** Each of the Company, the Guarantors and their respective subsidiaries possess all licenses, certificates, permits and other authorizations issued by the appropriate U.S. federal, state or non-U.S. regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such licenses, certificates, permits or other authorizations would not reasonably be expected to have a Material Adverse Effect, and neither the Company, the Guarantors nor any of their respective subsidiaries have received any notice of proceedings relating to the revocation or modification of any such license, certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to have a Material Adverse Effect, except as discussed in the Offering Memorandum (exclusive of any amendment or supplement thereto).

(u) **Title to Properties.** Each of the Company, the Guarantors and their respective subsidiaries owns or leases all such properties as are necessary to the conduct of their respective operations as presently conducted, except where the failure to own or lease a property or properties would not reasonably be expected to have a Material Adverse Effect.

(v) **Tax Law Compliance.** Each of the Company, the Guarantors and each of their subsidiaries has filed all non-U.S., U.S. federal, state and local tax returns that are required to be filed or has requested extensions thereof (except in any case in which the failure so to file would not have a Material Adverse Effect and except as set forth in or contemplated in the Offering Memorandum (exclusive of any amendment or supplement thereto)) and has paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due and payable, except for any such assessment, fine or penalty that is currently being contested in good faith or the non-payment of which would not reasonably be expected to have a Material Adverse Effect and except as set forth in or contemplated in the Offering Memorandum (exclusive of any amendment or supplement thereto).

(w) **Company and Guarantors Not an “Investment Company.”** The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the “**Investment Company Act**,” which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder). Neither the Company nor any Guarantor is, or after receipt of payment for the Securities will be, an “investment company” within the meaning of the Investment Company Act and will each conduct its business in a manner so that it will not become subject to the Investment Company Act.

(x) **Insurance.** Each of the Company, the Guarantors and their subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged.

(y) **No Price Stabilization or Manipulation.** None of the Company or any of the

Guarantors has taken or will take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(z) **Solvency.** Each of the Company and the Guarantors is, and immediately after the Closing Date will be, Solvent. As used herein, the term “**Solvent**” means, with respect to any person on a particular date, that on such date (i) the fair market value of the assets of such person is greater than the total amount of liabilities (including contingent liabilities) of such person, (ii) the present fair salable value of the assets of such person is greater than the amount that will be required to pay the probable liabilities of such person on its debts as they become absolute and matured, (iii) such person is able to realize upon its assets and pay its debts and other liabilities, including contingent obligations, as they mature and (iv) such person does not have unreasonably small capital.

(aa) **Compliance with Sarbanes-Oxley.** Parent and its subsidiaries and their respective officers and directors are in compliance with the applicable provisions of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**,” which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder).

(bb) **Parent’s Accounting System.** Parent and its subsidiaries, on a consolidated basis, maintain a system of internal controls over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) that is in compliance with the Exchange Act and is designed to provide reasonable assurances that: (i) transactions are executed in accordance with management’s general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Parent’s independent registered public accounting firm and the Audit Committee of the Board of Directors of Parent have been advised of: (i) any significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting which could adversely affect Parent’s ability to record, process, summarize, and report financial data; and (ii) any fraud, whether or not material, that involves management or other employees who have a role in Parent’s internal control over financial reporting; and since the date of the most recent evaluation of such internal control, there have been no significant changes in internal control or in other factors that could significantly affect internal control, including any corrective actions with regard to significant deficiencies and material weaknesses.

(cc) **Disclosure Controls and Procedures.** Parent has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15e and 15d-15 under the Exchange Act) that are designed to ensure that material information relating to Parent and its subsidiaries is made known to the chief executive officer and chief financial officer of Parent by others within Parent or any of its subsidiaries, and such disclosure controls and procedures are reasonably effective to perform the functions for which they were established subject to the limitations of any such control system.

(dd) **Regulations T, U, X.** Neither the Company nor any Guarantor nor any of their

respective subsidiaries nor any agent thereof acting on their behalf has taken, and none of them will take, any action that might cause this Agreement or the issuance or sale of the Securities to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

(ee) **Compliance with and Liability under Environmental Laws.** Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: (i) each of Parent and its subsidiaries and their respective operations and facilities, and to the knowledge of Responsible Officers (defined below) of the Parent and the Company the operations, real property and other assets of the persons providing manufacturing, warehousing and/or distribution services to Parent and each of its subsidiaries (in each case solely to the extent related to the performance of such services) (“**Service Contractors**”), and their respective operations and facilities, are in compliance with, and not subject to any known liabilities under, applicable Environmental Laws, which compliance includes, without limitation, having obtained and being in compliance with any permits, licenses or other governmental authorizations or approvals, and having made all filings and provided all financial assurances and notices, required for the ownership and operation of their respective businesses, properties and facilities under applicable Environmental Laws, and compliance with the terms and conditions thereof; (ii) neither Parent nor any of its subsidiaries has received any written communication, whether from a governmental authority, citizens group, employee or otherwise, that alleges that Parent or any of its subsidiaries is in violation of any Environmental Law; (iii) there is no claim, action or cause of action filed with a court or governmental authority, no investigation with respect to which Parent has received written notice, and no written notice by any person or entity alleging actual or potential liability on the part of Parent or any of its subsidiaries based on or pursuant to any Environmental Law pending or, to the knowledge of Parent and the Company, threatened against Parent or any of its subsidiaries or any person or entity whose liability under or pursuant to any Environmental Law Parent or any of its subsidiaries has retained or assumed either contractually or by operation of law; (iv) neither Parent nor any of its subsidiaries is conducting or paying for, in whole or in part, any investigation, response or other corrective action pursuant to any Environmental Law at any site or facility, nor is any of them subject or a party to any order, judgment, decree, contract or agreement which imposes any obligation or liability under any Environmental Law; (v) no lien, charge, encumbrance or restriction has been recorded pursuant to any Environmental Law with respect to any assets, facility or property owned, operated or leased by Parent or any of its subsidiaries; and (vi) there are no past or present actions, activities, circumstances, conditions or occurrences, including, without limitation, the Release or threatened Release of any Material of Environmental Concern or distribution of any product, that could reasonably be expected to result in a violation of or liability under any Environmental Law on the part of Parent or any of its subsidiaries, or to the knowledge of the Responsible Officers of the Parent and the Company on the part of any Service Contractor, including without limitation, any such liability which Parent or any of its subsidiaries has retained or assumed either contractually or by operation of law.

For purposes of this Agreement, “**Environment**” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetlands, flora and fauna. “**Environmental Laws**” means the common law and all federal, state, local and foreign laws or regulations, ordinances, codes, orders, decrees, judgments and injunctions issued, promulgated or entered thereunder, relating to pollution or protection of the Environment or human health, including without limitation, those relating to (i) the Release or

threatened Release of Materials of Environmental Concern; and (ii) the manufacture, processing, distribution, use, generation, treatment, storage, transport, handling or recycling of Materials of Environmental Concern. “**Materials of Environmental Concern**” means any substance, material, pollutant, contaminant, chemical, waste, compound, or constituent, in any form, including without limitation, petroleum and petroleum products, and pesticides, subject to regulation or which can give rise to liability under any Environmental Law. “**Release**” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment, or into, from or through any building, structure or facility. For purposes of this Section 1(ee) only, “**Responsible Officer**” means, with respect to any person, any of the principal executive officers, managing members or general partners of such person but, in any event, with respect to financial matters, the chief financial officer of such person.

(ff) **ERISA Compliance.** Parent and its subsidiaries and any “employee benefit plan” (as defined under the Employee Retirement Income Security Act of 1974 (as amended, “**ERISA**,” which term, as used herein, includes the regulations and published interpretations thereunder) established or maintained by Parent, its subsidiaries or their ERISA Affiliates (as defined below) are in compliance in all material respects with ERISA and, to the knowledge of Parent and the Company, each “multiemployer plan” (as defined in Section 4001 of ERISA)) to which Parent, its subsidiaries or an ERISA Affiliate contributes (a “**Multiemployer Plan**”) is in compliance in all material respects with ERISA. “**ERISA Affiliate**” means, with respect to Parent or a subsidiary of Parent, any member of any group of organizations described in Section 414 of the Internal Revenue Code of 1986 (as amended, the “**Code**,” which term, as used herein, includes the regulations and published interpretations thereunder) of which Parent or such subsidiary is a member. No “reportable event” (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any “employee benefit plan” established or maintained by Parent, its subsidiaries or any of their ERISA Affiliates. No “single employer plan” (as defined in Section 4001 of ERISA) established or maintained by Parent, its subsidiaries or any of their ERISA Affiliates, if such “employee benefit plan” were terminated, would have any “amount of unfunded benefit liabilities” (as defined under ERISA). Neither Parent, its subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “employee benefit plan” or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each “employee benefit plan” established or maintained by Parent, its subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401 of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

(gg) **Compliance with Labor Laws.** Except as would not, individually or in the aggregate, result in a Material Adverse Effect, (i) there is (A) no unfair labor practice complaint pending or, to the knowledge of Parent and the Company, threatened against Parent or any of its subsidiaries before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under collective bargaining agreements pending, or to the knowledge of Parent and the Company, threatened, against Parent or any of its subsidiaries, (B) no strike, labor dispute, slowdown or stoppage pending or, to the knowledge of Parent and the Company, threatened against Parent or any of its subsidiaries and (C) no union representation question existing with respect to the employees of Parent or any of its subsidiaries and, to the knowledge of Parent and the Company, no union organizing activities taking place and (ii) there has been no violation of any federal, state or local law relating to discrimination in hiring, promotion or pay of

employees or of any applicable wage or hour laws.

(hh) **Related Party Transactions.** No relationship, direct or indirect, exists between or among any of Parent or any Affiliate of Parent, on the one hand, and any director, officer, member, stockholder, customer or supplier of Parent or any Affiliate of Parent, on the other hand, which would be required by Item 404 of the Commission's Regulation S-K to be disclosed which is not so disclosed in the Offering Memorandum. There are no outstanding loans, advances (except advances for business expenses in the ordinary course of business) or guarantees of indebtedness by Parent or any Affiliate of Parent to or for the benefit of any of the officers or directors of Parent or any Affiliate of Parent or any of their respective family members.

(ii) **No Unlawful Contributions or Other Payments.** Neither Parent nor any of its subsidiaries, nor any director, officer, or, to the knowledge of Parent and the Company, any employee, nor, to Parent's knowledge, any agent or representative of Parent or of any of its subsidiaries, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any (i) "government official" (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) or (ii) to any "foreign official" (as defined in the Foreign Corrupt Practices Act of 1977, as amended) or any foreign political party or official thereof or any candidate for foreign political office, in each case, to influence official action or secure an improper advantage; and Parent and, to the knowledge of Parent, its subsidiaries have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein.

(jj) **Compliance with Anti-Money Laundering Laws.** The operations of Parent and its subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving Parent or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of Parent, threatened.

(kk) **Compliance with Foreign Laws.** (i) Parent represents that neither Parent nor any of its subsidiaries (collectively, the "**Entity**") or, to the knowledge of the Entity, any director, officer, employee, agent, affiliate or representative of the Entity, is an individual or entity ("**Person**") that is, or is owned or controlled by a Person that is:

(A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control (collectively, "**Sanctions**"),

nor,

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, North Korea, Sudan and Syria).

(ii) The Entity represents and covenants that it will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) The Entity represents and covenants that, for the past 5 years, it has not knowingly engaged in, is not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(l) **Regulation S.** The Company, the Guarantors and their respective Affiliates and all persons acting on their behalf (other than the Initial Purchasers, as to whom the Company and the Guarantors make no representation) have complied with and will comply with the offering restrictions requirements of Regulation S in connection with the offering of the Securities outside the United States and, in connection therewith, the Offering Memorandum will contain the disclosure required by Rule 902 of Regulation S. The Securities sold in reliance on Regulation S will be represented upon issuance by a temporary global security that may not be exchanged for definitive securities until the expiration of the 40-day restricted period referred to in Rule 903 of the Securities Act and only upon certification of beneficial ownership of such Securities by non-U.S. persons or U.S. persons who purchased such Securities in transactions that were exempt from the registration requirements of the Securities Act.

Any certificate signed by an officer of the Company or any Guarantor and delivered to the Initial Purchasers or to counsel for the Initial Purchasers shall be deemed to be a representation and warranty by the Company or such Guarantor to each Initial Purchaser as to the matters set forth therein.

SECTION 2. **Purchase, Sale and Delivery of the Securities.**

(a) **The Securities.** Each of the Company and the Guarantors agrees to issue and sell to the Initial Purchasers, severally and not jointly, all of the Securities, and the Initial Purchasers agree, severally and not jointly, to purchase from the Company and the Guarantors the aggregate principal amount of Securities set forth opposite their names on Schedule A, at a purchase price of 97.50% of the principal amount thereof, payable on the Closing Date, in each case, on the basis of the representations, warranties and agreements herein contained, and upon the terms, subject to the conditions thereto, herein set forth.

(b) **The Closing Date.** Delivery of certificates for the Securities in definitive form to be purchased by the Initial Purchasers and payment therefor shall be made at the offices of Cahill Gordon & Reindel LLP, 80 Pine Street, New York, New York 10005 (or such other place as may be agreed to by the Company and the Representatives) at 9:00 a.m. New York City time, on January 31, 2012, or such other time and date as the Representatives shall designate by notice to the Company (the time and date of such closing are called the “**Closing Date**”). The Company hereby acknowledges that circumstances under which the Representatives may provide notice to postpone the Closing Date as originally scheduled include, but are in no way limited to, any determination by the Company or the Initial Purchasers to recirculate to investors copies of an amended or supplemented Offering Memorandum or a delay as contemplated by the provisions of Section 17 hereof.

(c) **Delivery of the Securities.** The Company shall deliver, or cause to be delivered, to the Representatives for the accounts of the several Initial Purchasers certificates for the Securities at the Closing Date against the irrevocable release of a wire transfer of immediately available funds for the amount of the purchase price therefor. The certificates for the Securities shall be in such denominations and registered in the name of Cede & Co., as nominee of the Depositary, pursuant to the DTC Agreement, and shall be made available for inspection on the business day preceding the Closing Date at a location in New York City, as the Representatives may designate. Time shall be of the essence, and delivery at the time and place specified in this Agreement is a further condition to the obligations of the Initial Purchasers.

(d) **Initial Purchasers as Qualified Institutional Buyers.** Each Initial Purchaser severally and not jointly represents and warrants to, and agrees with, the Company that:

(i) this Agreement has been duly authorized, executed and delivered by each Initial Purchaser;

(ii) it will offer and sell Securities only to (a) persons who it reasonably believes are “qualified institutional buyers” within the meaning of Rule 144A (“**Qualified Institutional Buyers**”) in transactions meeting the requirements of Rule 144A or (b) upon the terms and conditions set forth in Annex I to this Agreement;

(iii) it is an institutional “accredited investor” within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act; and

(iv) it will not offer or sell Securities by, any form of general solicitation or general advertising, including but not limited to the methods described in Rule 502(c) under the Securities Act.

SECTION 3. Additional Covenants. Each of the Company and the Guarantors further covenants and agrees with each Initial Purchaser as follows:

(a) **Preparation of Final Offering Memorandum; Initial Purchasers’ Review of Proposed Amendments and Supplements and Company Additional Written Communications.** As promptly as practicable following the Time of Sale and in any event not later than the second business day following the date hereof, the Company shall prepare and deliver to the Initial Purchasers the Final Offering Memorandum, which shall consist of the

Preliminary Offering Memorandum as modified only by the information contained in the Pricing Supplement and such other immaterial changes as may be mutually agreed. The Company shall not amend or supplement the Preliminary Offering Memorandum or the Pricing Supplement. The Company shall not amend or supplement the Final Offering Memorandum prior to the Closing Date unless the Representatives shall previously have been furnished a copy of the proposed amendment or supplement at least two business days prior to the proposed use or filing, and shall not have objected to such amendment or supplement. Before making, preparing, using, authorizing, approving or distributing any Company Additional Written Communication, the Company shall furnish to the Representatives a copy of such written communication for review and shall not make, prepare, use, authorize, approve or distribute any such written communication to which the Representatives reasonably object.

(b) **Amendments and Supplements to the Final Offering Memorandum and Other Securities Act Matters.** If at any time prior to the Closing Date (i) any event shall occur or condition shall exist as a result of which any of the Pricing Disclosure Package as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading or (ii) it is necessary to amend or supplement any of the Pricing Disclosure Package to comply with law, the Company and the Guarantors will immediately notify the Initial Purchasers thereof and forthwith prepare and (subject to Section 3(a) hereof) furnish to the Initial Purchasers such amendments or supplements to any of the Pricing Disclosure Package as may be necessary so that the statements in any of the Pricing Disclosure Package as so amended or supplemented will not, in the light of the circumstances under which they were made, be misleading or so that any of the Pricing Disclosure Package will comply with all applicable law. If, prior to the completion of the placement of the Securities by the Initial Purchasers with the Subsequent Purchasers, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Final Offering Memorandum, as then amended or supplemented, in order to make the statements therein, in the light of the circumstances when the Final Offering Memorandum is delivered to a Subsequent Purchaser, not misleading, or if in the judgment of the Representatives or counsel for the Initial Purchasers it is otherwise necessary to amend or supplement the Final Offering Memorandum to comply with law, the Company and the Guarantors agree to promptly prepare (subject to Section 3 hereof), file with the Commission and furnish at its own expense to the Initial Purchasers, amendments or supplements to the Final Offering Memorandum so that the statements in the Final Offering Memorandum as so amended or supplemented will not, in the light of the circumstances at the Closing Date and at the time of sale of Securities, be misleading or so that the Final Offering Memorandum, as amended or supplemented, will comply with all applicable law.

Following the consummation of the Exchange Offer or the effectiveness of an applicable shelf registration statement and for so long as the Securities are outstanding if, in the judgment of the Representatives, the Representatives or any of their Affiliates are required to deliver a prospectus in connection with sales of, or market-making activities with respect to, the Securities, to periodically amend the applicable registration statement so that the information contained therein complies with the requirements of Section 10 of the Securities Act, to amend the applicable registration statement or supplement the related prospectus or the documents incorporated therein when necessary to reflect any material changes in the information provided therein so that the registration statement and the prospectus will not contain any untrue statement

of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing as of the date the prospectus is so delivered, not misleading and to provide the Initial Purchasers with copies of each amendment or supplement filed and such other documents as the Initial Purchasers may reasonably request.

The Company hereby expressly acknowledges that the indemnification and contribution provisions of Sections 8 and 9 hereof are specifically applicable and relate to each offering memorandum, registration statement, prospectus, amendment or supplement referred to in this Section 3.

(c) **Copies of the Offering Memorandum.** The Company agrees to furnish the Initial Purchasers, without charge, as many copies of the Pricing Disclosure Package and the Final Offering Memorandum and any amendments and supplements thereto as they shall reasonably request.

(d) **Blue Sky Compliance.** Each of the Company and the Guarantors shall cooperate with the Representatives and counsel for the Initial Purchasers to qualify or register (or to obtain exemptions from qualifying or registering) all or any part of the Securities for offer and sale under the securities laws of the several states of the United States, the provinces of Canada or any other jurisdictions designated by the Representatives, and shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Securities. None of the Company or any of the Guarantors will be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company shall advise the Representatives promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Securities for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, each of the Company and the Guarantors shall use its commercially reasonable efforts to obtain the withdrawal thereof at the earliest possible moment.

(e) **Use of Proceeds.** The Company shall apply the net proceeds from the sale of the Securities sold by it in the manner described under the caption "Use of Proceeds" in the Pricing Disclosure Package.

(f) **The Depositary.** The Company shall cooperate with the Initial Purchasers and use its commercially reasonable efforts to permit the Securities to be eligible for clearance and settlement through the facilities of the Depositary.

(g) **Additional Issuer Information.** Prior to the completion of the placement of the Securities by the Initial Purchasers with the Subsequent Purchasers, Parent shall file, on a timely basis, with the Commission and the New York Stock Exchange (the "NYSE") all reports and documents required to be filed under Section 13 or 15 of the Exchange Act. Additionally, at any time when Parent is not subject to Section 13 or 15 of the Exchange Act, for the benefit of holders and beneficial owners from time to time of the Securities, Parent shall furnish, at its expense, upon request, to holders and beneficial owners of Securities and prospective purchasers of Securities information satisfying the requirements of Rule 144A(d), except to the extent such requirement is modified in the Indenture.

(h) **Agreement Not To Offer or Sell Additional Securities.** During the period of 90 days following the date hereof, the Company will not, without the prior written consent of Morgan Stanley and Citi (which consent may be withheld at the sole discretion of either Morgan Stanley or Citi), directly or indirectly, sell, offer, contract or grant any option to sell, pledge, transfer or establish an open “put equivalent position” within the meaning of Rule 16a-1 under the Exchange Act, or otherwise dispose of or transfer, or announce the offering of, or file any registration statement under the Securities Act in respect of, any debt securities of the Company or securities exchangeable for or convertible into debt securities of the Company (other than as contemplated by this Agreement and to register the Exchange Securities).

(i) **[Reserved.]**

(j) **No Integration.** The Company agrees that it will not and will cause its Affiliates not to make any offer or sale of securities of the Company of any class if, as a result of the doctrine of “integration” referred to in Rule 502 under the Securities Act, such offer or sale would render invalid (for the purpose of (i) the sale of the Securities by the Company to the Initial Purchasers, (ii) the resale of the Securities by the Initial Purchasers to Subsequent Purchasers or (iii) the resale of the Securities by such Subsequent Purchasers to others) the exemption from the registration requirements of the Securities Act provided by Section 4(2) thereof or by Rule 144A or by Regulation S thereunder or otherwise.

(k) **No General Solicitation or Directed Selling Efforts.** The Company agrees that it will not and will not permit any of its Affiliates or any other person acting on its or their behalf (other than the Initial Purchasers, as to which no covenant is given) to (i) solicit offers for, or offer or sell, the Securities by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D under the Securities Act or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act or (ii) engage in any directed selling efforts with respect to the Securities within the meaning of Regulation S, and the Company will and will cause all such persons to comply with the offering restrictions requirement of Regulation S with respect to the Securities.

(l) **No Restricted Resales.** The Company will not, and will not permit any of its Affiliates to resell any of the Notes that have been reacquired by any of them.

(m) **Legended Securities.** Each certificate for a Security will bear the legend contained in “Notice to Investors” in the Preliminary Offering Memorandum for the time period and upon the other terms stated in the Preliminary Offering Memorandum.

Except as provided in clause (h), the Representatives on behalf of the several Initial Purchasers, may, in their sole discretion, waive in writing the performance by the Company or any Guarantor of any one or more of the foregoing covenants or extend the time for their performance.

SECTION 4. Payment of Expenses. Each of the Company and the Guarantors agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including, without limitation, (i) all expenses incident to the issuance and delivery of the Securities (including all printing and engraving costs), (ii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of

the Securities to the Initial Purchasers, (iii) all fees and expenses of the Company's and the Guarantors' counsel, the Parent's independent public or certified public accountants and other advisors, (iv) all fees and expenses of Blacksmith's independent public or certified public accountants, (v) all fees and expenses of the independent public or certified public accountants with respect to the GSK Brands, (vi) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Pricing Disclosure Package and the Final Offering Memorandum (including financial statements and exhibits), and all amendments and supplements thereto, this Agreement, the Registration Rights Agreement, the Indenture, the DTC Agreement and the Notes and Guarantees, (vii) all filing fees, attorneys' fees and expenses incurred by the Company, the Guarantors or the Initial Purchasers in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Securities for offer and sale under the securities laws of the several states of the United States, the provinces of Canada or other jurisdictions designated by the Initial Purchasers (including, without limitation, the cost of preparing, printing and mailing preliminary and final blue sky or legal investment memoranda and any related supplements to the Pricing Disclosure Package or the Final Offering Memorandum), (viii) the fees and expenses of the Trustee, including the fees and disbursements of counsel for the Trustee in connection with the Indenture, the Securities and the Exchange Securities, (ix) any fees payable in connection with the rating of the Securities or the Exchange Securities with the ratings agencies, (x) any filing fees incident to, and any reasonable fees and disbursements of counsel to the Initial Purchasers in connection with the review by the Financial Industry Regulatory Authority ("FINRA"), if any, of the terms of the sale of the Securities or the Exchange Securities, (xi) all fees and expenses (including reasonable fees and expenses of counsel) of the Company and the Guarantors in connection with approval of the Securities by the Depository for "book-entry" transfer, and the performance by the Company and the Guarantors of their respective other obligations under this Agreement and (xii) all expenses incident to the "road show" for the offering of the Securities, including the cost of any chartered airplane or other transportation. Except as provided in this Section 4 and Sections 6, 8 and 9 hereof, the Initial Purchasers shall pay their own expenses, including the fees and disbursements of their counsel.

SECTION 5. Conditions of the Obligations of the Initial Purchasers. The obligations of the several Initial Purchasers to purchase and pay for the Securities as provided herein on the Closing Date shall be subject to the accuracy of the representations and warranties on the part of the Company and the Guarantors set forth in Section 1 hereof as of the date hereof and as of the Closing Date as though then made, and to the timely performance by the Company of its covenants and other obligations hereunder, and to each of the following additional conditions:

(a) **Accountants' Comfort Letter.** On the date hereof, the Initial Purchasers shall have received from each of (i) PricewaterhouseCoopers LLP (US), the independent registered public accounting firm for the Parent and for Blacksmith and (ii) PricewaterhouseCoopers LLP (UK), the independent registered public accounting firm for the GSK Brands, a "comfort letter" dated the date hereof addressed to the Initial Purchasers, in form and substance satisfactory to the Representatives, covering the financial information of the Parent and its subsidiaries, Blacksmith and its subsidiaries and the GSK Brands, as applicable, in the Pricing Disclosure Package and other customary matters. In addition, on the Closing Date, the Initial Purchasers shall have received from such accountants a "bring-down comfort letter" dated the Closing Date addressed to the Initial Purchasers, in form and substance satisfactory to the Representatives, in the form of the "comfort letter" delivered on the date hereof, except that (i) it shall cover the financial information of the Parent and its subsidiaries, Blacksmith and its subsidiaries and the GSK Brands, as applicable, in the Final Offering Memorandum and any amendment or supplement

thereto and (ii) procedures shall be brought down to a date no more than 5 days prior to the Closing Date.

(b) **No Material Adverse Effect or Ratings Agency Change.** For the period from and after the date of this Agreement and prior to the Closing Date:

(i) in the judgment of the Representatives there shall not have occurred any Material Adverse Effect; and

(ii) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded the Company or any of its subsidiaries or any of their securities or indebtedness by any "nationally recognized statistical rating organization" as such term is defined for purposes of Rule 436 under the Securities Act.

(c) **Opinion of Counsel for the Company.** On the Closing Date the Initial Purchasers shall have received the opinion of Kirkland & Ellis LLP, counsel for the Company, dated as of the Closing Date, the form of which is attached as Exhibit A.

(d) **Opinion of Counsel for the Initial Purchasers.** On the Closing Date the Initial Purchasers shall have received the favorable opinion of Cahill Gordon & Reindel LLP, counsel for the Initial Purchasers, dated as of the Closing Date, with respect to such matters as may be reasonably requested by the Initial Purchasers.

(e) **Officers' Certificate.** On the Closing Date the Initial Purchasers shall have received a written certificate executed by the Chairman of the Board, Chief Executive Officer or President of the Company and each Guarantor and the Chief Financial Officer or Chief Accounting Officer of the Company and each Guarantor, dated as of the Closing Date, to the effect set forth in Section 5(b)(ii) hereof, and further to the effect that:

(i) for the period from and after the date of this Agreement and prior to the Closing Date there has not occurred any Material Adverse Effect;

(ii) the representations, warranties and covenants of the Company and the Guarantors set forth in Section 1 hereof were true and correct as of the date hereof and are true and correct as of the Closing Date with the same force and effect as though expressly made on and as of the Closing Date; and

(iii) the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date.

(f) **Indenture; Registration Rights Agreement.** The Company and the Guarantors shall have executed and delivered the Indenture, in form and substance reasonably satisfactory to the Initial Purchasers, and the Initial Purchasers shall have received executed copies thereof. The Company and the Guarantors shall have executed and delivered the Registration Rights Agreement, in form and substance reasonably satisfactory to the Initial Purchasers, and the Initial

Purchasers shall have received such executed counterparts.

(g) **Acquisition of the GSK Brands.** Contemporaneous with the Closing, the acquisition of the GSK Brands shall have been consummated pursuant to the BSPA I.

(h) **New Credit Facilities; Release of Collateral; Use of Proceeds.** Contemporaneous with the Closing, (i) the New Credit Facilities shall have been entered into by the parties thereto in form and substance reasonably satisfactory to the Initial Purchasers and the New Credit Facilities shall be in full force and effect and (ii) the Company shall have received not less than \$660,000,000 gross proceeds from the term loans thereunder. Contemporaneous with the Closing, the Company shall have applied the net proceeds from such term loans and from the sale of the Securities, and cash on hand, to repay all amounts outstanding under the Existing Credit Facility, which shall be terminated, all security interests in collateral securing amounts outstanding under the Existing Credit Facility shall have been released pursuant to documentation satisfactory to the Initial Purchasers (or arrangements for such release satisfactory to the Initial Purchasers shall have been made) and the acquisition of the GSK Brands.

(i) **Additional Documents.** On or before the Closing Date, the Initial Purchasers and counsel for the Initial Purchasers shall have received such information, documents and opinions as they may reasonably require for the purposes of enabling them to pass upon the issuance and sale of the Securities as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

If any condition specified in this Section 5 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Representatives by notice to the Company at any time on or prior to the Closing Date, which termination shall be without liability on the part of any party to any other party, except that Sections 4, 6, 8 and 9 hereof shall at all times be effective and shall survive such termination.

SECTION 6. Reimbursement of Initial Purchasers' Expenses. If this Agreement is terminated by the Representatives pursuant to Section 5 or clauses (i) or (iv) of Section 10 hereof, including if the sale to the Initial Purchasers of the Securities on the Closing Date is not consummated because of any refusal, inability or failure on the part of the Company to perform any agreement herein or to comply with any provision hereof, the Company agrees to reimburse the Initial Purchasers, severally, upon demand for all out-of-pocket expenses that shall have been reasonably incurred by the Initial Purchasers in connection with the proposed purchase and the offering and sale of the Securities, including, without limitation, fees and disbursements of counsel, printing expenses, travel expenses, postage, facsimile and telephone charges.

SECTION 7. Offer, Sale and Resale Procedures. Each of the Initial Purchasers, on the one hand, and the Company and each of the Guarantors, on the other hand, hereby agree to observe the following procedures in connection with the offer and sale of the Securities:

(a) Offers and sales of the Securities will be made only by the Initial Purchasers or Affiliates thereof qualified to do so in the jurisdictions in which such offers or sales are made. Each such offer or sale shall only be made to persons whom the offeror or seller reasonably

believes to be Qualified Institutional Buyers or non-U.S. persons outside the United States to whom the offeror or seller reasonably believes offers and sales of the Securities may be made in reliance upon Regulation S upon the terms and conditions set forth in Annex I hereto, which Annex I is hereby expressly made a part hereof.

(b) The Securities will be offered by approaching prospective Subsequent Purchasers on an individual basis. No general solicitation or general advertising (within the meaning of Rule 502 under the Securities Act) will be used in the United States in connection with the offering of the Securities.

(c) Upon original issuance by the Company, and until such time as the same is no longer required under the applicable requirements of the Securities Act, the Securities (and all securities issued in exchange therefor or in substitution thereof, other than the Exchange Securities) shall bear the following legend:

“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT OR (C) IT IS AN ACCREDITED INVESTOR (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN “**ACCREDITED INVESTOR**”), (2) AGREES THAT IT WILL NOT WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER-DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS SECURITY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS SECURITY), (D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUER SO REQUESTS), OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY, IF THE PROPOSED TRANSFEREE IS AN ACCREDITED INVESTOR, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS

EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATIONS UNDER THE SECURITIES ACT."

Following the sale of the Securities by the Initial Purchasers to Subsequent Purchasers pursuant to the terms hereof, the Initial Purchasers shall not be liable or responsible to the Company for any losses, damages or liabilities suffered or incurred by the Company, including any losses, damages or liabilities under the Securities Act, arising from or relating to any resale or transfer of any Security.

SECTION 8. **Indemnification.**

(a) **Indemnification of the Initial Purchasers.** Each of the Company and the Guarantors, jointly and severally, agrees to indemnify and hold harmless each Initial Purchaser, its Affiliates, directors, officers and employees, and each person, if any, who controls any Initial Purchaser within the meaning of the Securities Act and the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Initial Purchaser, Affiliate, director, officer, employee or controlling person may become subject, under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Company), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based: (i) upon any untrue statement or alleged untrue statement of a material fact contained or incorporated by reference in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Communication or the Final Offering Memorandum (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; or (ii) in whole or in part upon any inaccuracy in the representations and warranties of the Company contained herein; or (iii) in whole or in part upon any failure of the Company to perform its obligations hereunder or under law; or (iv) any act or failure to act or any alleged act or failure to act by any Initial Purchaser in connection with, or relating in any manner to, the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon any matter covered by clause (i) above, provided that the Company shall not be liable under this clause (iv) to the extent that a court of competent jurisdiction shall have determined by a final judgment that such loss, claim, damage, liability or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by such Initial Purchaser through its gross negligence or willful misconduct; and to reimburse each Initial Purchaser and each such Affiliate, director, officer, employee or controlling person for any and all expenses (including the fees and disbursements of counsel chosen by the Representatives) as such expenses are reasonably incurred by such Initial Purchaser or such Affiliate, director, officer, employee or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply, with respect to an Initial Purchaser, to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by such Initial Purchaser through the Representatives expressly for use in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Communication or the Final Offering Memorandum (or any amendment or

supplement thereto). The indemnity agreement set forth in this Section 8(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) **Indemnification of the Company and the Guarantors.** Each Initial Purchaser agrees, severally and not jointly, to indemnify and hold harmless the Company, each Guarantor, each of their respective directors and each person, if any, who controls the Company or any Guarantor within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company, any Guarantor or any such director or controlling person may become subject, under the Securities Act, the Exchange Act, or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Initial Purchaser), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained or incorporated by reference in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Communication or the Final Offering Memorandum (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Communication or the Final Offering Memorandum (or any amendment or supplement thereto), in reliance upon and in conformity with written information furnished to the Company by such Initial Purchaser through the Representatives expressly for use therein; and to reimburse the Company, any Guarantor and each such director or controlling person for any and all expenses (including the fees and disbursements of counsel) as such expenses are reasonably incurred by the Company, any Guarantor or such director or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. Each of the Company and the Guarantors hereby acknowledges that the only information that the Initial Purchasers through the Representatives have furnished to the Company expressly for use in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Communication or the Final Offering Memorandum (or any amendment or supplement thereto) are the statements set forth in the fourth paragraph and the third sentence of the seventh paragraphs under the caption "Plan of Distribution" in the Preliminary Offering Memorandum and the Final Offering Memorandum. The indemnity agreement set forth in this Section 8(b) shall be in addition to any liabilities that each Initial Purchaser may otherwise have.

(c) **Notifications and Other Indemnification Procedures.** Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party hereunder for contribution or otherwise than under the indemnity agreement contained in this Section 8 or to the extent it is not prejudiced (through the forfeiture of substantive rights and defenses) as a result of such failure and shall not relieve the indemnifying party from any liability that the indemnifying party may have to an indemnified party otherwise than under the provisions of this Section 8 and Section 9. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such

indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 8 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the immediately preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (together with local counsel (in each jurisdiction)), approved by the indemnifying party (the Representatives in the case of Sections 8(b) and 9 hereof), representing the indemnified parties who are parties to such action) or (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) **Settlements.** The indemnifying party under this Section 8 shall not be liable for any settlement of any proceeding effected without its written consent, which will not be unreasonably withheld, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by this Section 8, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request or disputed in good faith the indemnified party's entitlement to such reimbursement prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include any statements as to or any findings of fault, culpability or failure to act by or on behalf of any indemnified party.

SECTION 9. Contribution. If the indemnification provided for in Section 8 hereof is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, from the offering of the Securities pursuant to this

Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, in connection with the statements or omissions or inaccuracies in the representations and warranties herein which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, and the total discount received by the Initial Purchasers bear to the aggregate initial offering price of the Securities. The relative fault of the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact or any such inaccurate or alleged inaccurate representation or warranty relates to information supplied by the Company and the Guarantors, on the one hand, or the Initial Purchasers, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or inaccuracy.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 8 hereof, any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 8 hereof with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 9; *provided, however*, that no additional notice shall be required with respect to any action for which notice has been given under Section 8 hereof for purposes of indemnification.

The Company, the Guarantors and the Initial Purchasers agree that it would not be just and equitable if contribution pursuant to this Section 9 were determined by pro rata allocation (even if the Initial Purchasers were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 9.

Notwithstanding the provisions of this Section 9, no Initial Purchaser shall be required to contribute any amount in excess of the discount received by such Initial Purchaser in connection with the Securities distributed by it. No person guilty of fraudulent misrepresentation (within the meaning of Section 11 of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Initial Purchasers' obligations to contribute pursuant to this Section 9 are several, and not joint, in proportion to their respective commitments as set forth opposite their names in Schedule A. For purposes of this Section 9, each director, officer, and employee of an Initial Purchaser and each person, if any, who controls an Initial Purchaser within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as such Initial Purchaser, and each director of the Company or any Guarantor, and each person, if any, who controls the Company or any Guarantor with the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company and the Guarantors.

SECTION 10. Termination of this Agreement. Prior to the Closing Date, this Agreement may be terminated by the Representatives by notice given to the Company if at any time: (i) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by the NYSE or trading in securities generally on either the Nasdaq Stock Market or the NYSE shall have

been suspended or limited, or minimum or maximum prices shall have been generally established on any of such quotation system or stock exchange by the Commission or FINRA; (ii) a general banking moratorium shall have been declared by any of federal, New York or Delaware authorities; (iii) there shall have occurred any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States' or international political, financial or economic conditions, as in the judgment of the Representatives is material and adverse and makes it impracticable or inadvisable to proceed with the offering sale or delivery of the Securities in the manner and on the terms described in the Pricing Disclosure Package or to enforce contracts for the sale of securities; or (iv) in the judgment of the Representatives there shall have occurred any Material Adverse Effect. Any termination pursuant to this Section 10 shall be without liability on the part of (x) the Company or any Guarantor to any Initial Purchaser, except that the Company and the Guarantors shall be obligated to reimburse the expenses of the Initial Purchasers pursuant to Sections 4 and 6 hereof, (y) any Initial Purchaser to the Company or any Guarantor, or (z) other than as provided in the preceding clauses (x) and (y), any party hereto to any other party except that the provisions of Sections 8 and 9 hereof shall at all times be effective and shall survive such termination.

SECTION 11. Representations and Indemnities to Survive Delivery. The respective indemnities, agreements, representations, warranties and other statements of the Company, the Guarantors, their respective officers and the several Initial Purchasers set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Initial Purchaser, the Company, any Guarantor or any of their partners, officers or directors or any controlling person, as the case may be, and will survive delivery of and payment for the Securities sold hereunder and any termination of this Agreement.

SECTION 12. Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered, couriered or facsimiled and confirmed to the parties hereto as follows:

If to the Initial Purchasers:

Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036
Facsimile: (212) 761-4000
Attention: High Yield Syndicate Desk

with copies to (which shall not constitute notice):

Morgan Stanley & Co. LLC
Legal Department
1221 Avenue of the Americas
New York, New York 10020
Attention: High Yield Debt Coverage

with copies to (which shall not constitute notice):

Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
Facsimile: (212) 269-5420
Attention: Jennifer Ezring
Corey Wright

If to the Company or the Guarantors:

Prestige Brands, Inc.
90 North Broadway
Irvington, NY 10533
Facsimile: (914) 524-6821
Attention: Ronald M. Lombardi

with copies to (which shall not constitute notice):

Prestige Brands, Inc.
90 North Broadway
Irvington, NY 10533
Facsimile: (914) 524-7488
Attention: Eric S. Klee

and

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Facsimile: (212) 446-4900
Attention: Joshua N. Korff
Jason K. Zachary

Any party hereto may change the address or facsimile number for receipt of communications by giving written notice to the others in the manner as provided in this Section 12.

SECTION 13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto, and to the benefit of the indemnified parties referred to in Sections 8 and 9 hereof, and in each case their respective successors, and no other person will have any right or obligation hereunder. The term "successors" shall not include any Subsequent Purchaser or other purchaser of the Securities as such from any of the Initial Purchasers merely by reason of such purchase.

SECTION 14. Authority of the Representatives. Any action by the Initial Purchasers hereunder may be taken by the Representatives on behalf of the Initial Purchasers, and any such action taken by the Representatives shall be binding upon the Initial Purchasers.

SECTION 15. Partial Unenforceability. The invalidity or unenforceability of any section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other section, paragraph or provision hereof. If any section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

SECTION 16. Governing Law Provisions; Waiver to Trial by Jury. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN SUCH STATE WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY OR ON BEHALF OF ANY PARTY RELATED TO OR ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OF SERVICES HEREUNDER.

Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby (“**Related Proceedings**”) may be instituted in the federal courts of the United States of America located in the City and County of New York or the courts of the State of New York in each case located in the City and County of New York (collectively, the “**Specified Courts**”), and each party irrevocably submits to the exclusive jurisdiction (except for suits, actions, or proceedings instituted in regard to the enforcement of a judgment of any Specified Court in a Related Proceeding, as to which such jurisdiction is non-exclusive) of the Specified Courts in any Related Proceeding. Service of any process, summons, notice or document by mail to such party’s address set forth above shall be effective service of process for any Related Proceeding brought in any Specified Court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any Specified Proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any Specified Court that any Related Proceeding brought in any Specified Court has been brought in an inconvenient forum.

SECTION 17. Default of One or More of the Several Initial Purchasers. If any one or more of the several Initial Purchasers shall fail or refuse to purchase Securities that it or they have agreed to purchase hereunder on the Closing Date, and the aggregate number of Securities which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase does not exceed 10% of the aggregate number of the Securities to be purchased on such date, the other Initial Purchasers shall be obligated, severally, in the proportions that the number of Securities set forth opposite their respective names on Schedule A bears to the aggregate number of Securities set forth opposite the names of all such non-defaulting Initial Purchasers, or in such other proportions as may be specified by the Initial Purchasers with the consent of the non-defaulting Initial Purchasers, to purchase the Securities which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase on the Closing Date. If any one or more of the Initial Purchasers shall fail or refuse to purchase Securities and the aggregate number of Securities with respect to which such default occurs exceeds 10% of the aggregate number of Securities to be purchased on the Closing Date, and arrangements satisfactory to the Initial Purchasers and the Company for the purchase of such Securities are not made within 48 hours after such default, this Agreement shall terminate without liability of any party to any other party except that the provisions of Sections 4, 6, 8 and 9 hereof shall at all times be effective and shall survive such termination. In any such case either the Initial Purchasers or the Company shall have the right to postpone the Closing Date, as the case may be, but in no event for longer than seven days in order that the required changes, if any, to the Final Offering Memorandum or any other documents or arrangements may

be affected.

As used in this Agreement, the term “**Initial Purchaser**” shall be deemed to include any person substituted for a defaulting Initial Purchaser under this Section 17. Any action taken under this Section 17 shall not relieve any defaulting Initial Purchaser from liability in respect of any default of such Initial Purchaser under this Agreement.

SECTION 18. No Advisory or Fiduciary Responsibility. Each of the Company and each Guarantor acknowledges and agrees that: (i) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the offering price of the Securities and any related discounts and commissions, is an arm’s-length commercial transaction between the Company and the Guarantors, on the one hand, and the several Initial Purchasers, on the other hand, and the Company and the Guarantors are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated by this Agreement; (ii) in connection with each transaction contemplated hereby and the process leading to such transaction, each Initial Purchaser is and has been acting solely as a principal and is not the agent or fiduciary of the Company, any Guarantor or any of their respective Affiliates, stockholders, creditors or employees or any other party; (iii) no Initial Purchaser has assumed or will assume an advisory or fiduciary responsibility in favor of the Company or any Guarantor with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether such Initial Purchaser has advised or is currently advising the Company or any Guarantor on other matters) or any other obligation to the Company or any Guarantor except the obligations expressly set forth in this Agreement; (iv) the several Initial Purchasers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and the Guarantors, and the several Initial Purchasers have no obligation to disclose any of such interests by virtue of any fiduciary or advisory relationship; and (v) the Initial Purchasers have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby, and the Company and the Guarantors have consulted their own legal, accounting, regulatory and tax advisors to the extent they deemed appropriate.

This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Guarantors and the several Initial Purchasers, or any of them, with respect to the subject matter hereof. The Company and the Guarantors hereby waive and release, to the fullest extent permitted by law, any claims that the Company and the Guarantors may have against the several Initial Purchasers with respect to any breach or alleged breach of fiduciary duty.

SECTION 19. General Provisions. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile or other electronic transmission (i.e., a “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart thereof. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,
PRESTIGE BRANDS, INC.

By: /s/ Ron Lombardi
Name: Ronald M. Lombardi
Title: Chief Financial Officer

PRESTIGE BRANDS HOLDINGS, INC.
PRESTIGE PERSONAL CARE HOLDINGS, INC.
PRESTIGE PERSONAL CARE, INC.
PRESTIGE SERVICES CORP.
PRESTIGE BRANDS HOLDINGS, INC.
PRESTIGE BRANDS INTERNATIONAL, INC.
MEDTECH HOLDINGS, INC.
MEDTECH PRODUCTS INC.
THE CUTEX COMPANY
THE DENOREX COMPANY
THE SPIC AND SPAN COMPANY
BLACKSMITH BRANDS, INC.,
as Guarantors

By: /s/ Ron Lombardi
Name: Ronald M. Lombardi
Title: Chief Financial Officer

The foregoing Purchase Agreement is hereby confirmed and accepted by the Initial Purchasers as of the date first above written.

Morgan Stanley & Co. LLC
Citigroup Global Markets Inc.
RBC Capital Markets, LLC
Acting on behalf of itself
and as the Representatives of
the several Initial Purchasers
By: Morgan Stanley & Co. LLC

By: /s/ James E. Bonetti
Name: James E. Bonetti
Title: Authorized Signatory

Initial Purchasers	Aggregate Principal Amount of Securities to be Purchased	
Morgan Stanley & Co. LLC	\$	100,000,000
Citigroup Global Markets Inc.		100,000,000
RBC Capital Markets, LLC		25,000,000
Deutsche Bank Securities Inc.		25,000,000
Total	\$	<u>250,000,000</u>

Opinion of counsel for the Company to be delivered pursuant to Section 5 of the Purchase Agreement.

We are issuing this letter in our capacity as special counsel for and at the request of Prestige Brands, Inc., a Delaware corporation (the “**Company**”), and the entities listed on Exhibit A hereto (the “**Guarantors**”), in response to the requirement in Section 5(c) of the Purchase Agreement, dated January 24, 2012 (the “**Purchase Agreement**”), among the Company, the Guarantors and Morgan Stanley & Co. LLC, Citigroup Global Markets Inc., RBC Capital Markets, LLC and Deutsche Bank Securities, Inc. (collectively, the “**Initial Purchasers**” and herein being called “**you**”) relating to the issuance and sale by the Company to the Initial Purchasers of up to \$250,000,000 in aggregate principal amount of the Company’s 8.125% Senior Notes due 2020 (the “**Securities**”) and the guarantees thereon (the “**Guarantees**”) to be issued under the Indenture, dated as of the date hereof (the “**Indenture**”), by and among the Company, the Guarantors and U.S. Bank National Association, as trustee (the “**Trustee**”). Every term which is defined or given a special meaning in the Purchase Agreement and which is not given a different meaning in this letter has the same meaning whenever it is used in this letter as the meaning it is given in the Purchase Agreement.

In connection with the preparation of this letter, we have among other things read:

- (a) the Preliminary Offering Memorandum of the Company, dated January 18, 2012, covering the offer and sale of the Securities, as supplemented or amended by the pricing supplement, dated January 24, 2012, containing the terms of the Securities (collectively, the “**Time of Sale Information**”);
- (b) the Offering Memorandum of the Company, dated January [●], 2012, covering the offer and sale of the Securities (the “**Offering Memorandum**”);
- (c) an executed copy of the Purchase Agreement;
- (d) an executed copy of the Indenture;
- (e) an executed copy of the Registration Rights Agreement, dated as of the date hereof, by and among the Company, the Guarantors and the Initial Purchasers (the “**Registration Rights Agreement**”);
- (f) a specimen certificate of the Securities to be delivered on the date hereof;
- (g) a form of Notation of Guarantee;

- (h) copies of the agreements listed on Exhibit B hereto (collectively, the “**Specified Contracts**”);
- (i) the Company’s amended and restated certificate of incorporation, as certified by the Secretary of State of the State of Delaware on January [●], 2012 (the “**Certificate of Incorporation**”);
- (j) a certificate from the Secretary of State of the State of Delaware as to the good standing of the Company, dated January [●], 2012, and a facsimile bring down thereof dated the date hereof (the “**Delaware Certificate**”);
- (k) the Company’s amended and restated by-laws, as currently in effect, as certified by the Secretary of the Company (the “**By-laws**”);
- (l) a certified copy of the written consents adopted by the board of directors of the Company on January [●], 2012, and a certified copy of resolutions adopted by the Pricing Committee of the Company on January [●], 2012;
- (m) a certified copy of the written consents adopted by the board of directors of the Company on January [●], 2012;
- (n) the Officer’s Certificate of the Company, dated the date hereof, delivered pursuant to Section [5(e)] of the Purchase Agreement;
- (o) each of the Delaware Guarantors’ (as defined below) certificates of incorporation or other organizational documents, as certified by the Secretary of State of the State of Delaware on the dates set forth therein (the “**Delaware Guarantor Organizational Documents**”);
- (p) a certificate from the Secretary of State of the State of Delaware of each such Delaware Guarantor (as defined below) as to the good standing of each of the Delaware Guarantors, dated as of the dates set forth thereon and a facsimile bring down thereof dated the date hereof (the “**Delaware Guarantor Certificates**”);
- (q) each of the Delaware Guarantor’s (as defined below) bylaws or similar governing documents, as currently in effect, as certified by the Secretary of each of the Delaware Guarantors (as defined below) (the “**Opinion Guarantor By-laws**”);
- (r) certified copies of the written consents adopted by the board of directors, board of managers or member, as applicable, of each of the Guarantors on January [●], 2012;

(s) copies of all certificates and other documents delivered today at the closing of the purchase and sale of the Securities under the Purchase Agreement; and

(t) such other documents, records and other instruments as we have deemed necessary or appropriate in order to deliver the opinions set forth herein

The term “**Transaction Documents**” is used in this letter to refer collectively to the Purchase Agreement, the Indenture, the Registration Rights Agreement, the Securities and the Guarantees. The entities listed on Exhibit A hereto, other than Prestige Brands International, Inc., a Virginia corporation, and Prestige Brands Holdings, Inc., a Virginia corporation (the “**Virginia Guarantors**”), are collectively referred to herein as the “**Delaware Guarantors.**” The notes contemplated by the Registration Rights Agreement to be offered to holders of Securities in exchange for the Securities are referred to herein as the “**Exchange Securities.**”

Subject to the assumptions, qualifications and limitations which are identified in this letter, we advise you that:

- 1 The Company and each of the Delaware Guarantors is a corporation existing and in good standing under the General Corporation Law of the State of Delaware (“**DGCL**”).
- 2 The Company and each of the Delaware Guarantors has the corporate power to enter into and perform their respective obligations under the Transaction Documents to which it is a party and to conduct its business as described in the Offering Memorandum.
- 3 The Purchase Agreement has been duly authorized, executed and delivered by the Company and each of the Delaware Guarantors.
- 4 The Purchase Agreement has been duly executed and delivered by the Virginia Guarantors (to the extent execution and delivery are governed by New York law).
- 5 The Indenture has been duly authorized, executed and delivered by the Company and each of the Delaware Guarantors, and duly executed and delivered by the Virginia Guarantors (to the extent execution and delivery are governed by New York law). Assuming due execution and delivery of the Indenture by the Trustee, the Indenture is a valid and binding obligation of the Company and each of the Guarantors, and is enforceable against the Company and each of the Guarantors in accordance with its terms.

- 6 The Securities have been duly authorized, executed and delivered by the Company, and when paid for by the Initial Purchasers in accordance with the terms of the Purchase Agreement (assuming the due authorization, execution and delivery of the Indenture by the Trustee and the due authentication and delivery of the Securities by the Trustee in accordance with the Indenture), will constitute “Notes” under the terms of the Indenture, will constitute the valid and binding obligations of the Company, and will be enforceable against the Company in accordance with their terms.
- 7 The Registration Rights Agreement has been duly executed and delivered by the Virginia Guarantors (to the extent execution and delivery are governed by New York law), and duly authorized, executed and delivered by the Company and the Delaware Guarantors and assuming due execution by the Initial Purchasers, the Registration Rights Agreement is a valid and binding obligation of the Company and the Guarantors and is enforceable against the Company and the Guarantors in accordance with its terms.
- 8 The execution and delivery of the Transaction Documents by the Company and each of the Guarantors to which each is a party, the consummation of the transactions contemplated thereby, and the performance by each of the Company and the Guarantors of their respective obligations thereunder (including, without limitation, the issuance and sale of the Securities to the Initial Purchasers and the application of the net proceeds therefrom as described in the Offering Memorandum under the caption “Use of Proceeds”) do not and will not (i) conflict with or violate any of the terms or provisions of the charter, by-laws or other organizational documents of the Company or any Delaware Guarantor, (ii) result in any breach of any of the terms and provisions of, or constitute a default (or an event which with notice or lapse of time, or both, would constitute a default) under any Specified Contracts (it being expressly understood that in each case we express no opinion as to compliance with any financial covenant or test or cross-default provision in any Specified Contract), (iii) violate or conflict with any judgment, decree or order identified to us by the Company (we note that none were identified) of any court or any judicial, regulatory or other legal or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties, and (iv) violate any Specified Law, except in the case of clause (ii), for any such conflict, breach, violation or default which has been waived by the party or parties with power to waive such conflict, breach, violation or default. (The advice in this paragraph is referred to herein as the “**No Conflicts Opinion**”).
- 9 No consent, approval, authorization, or order of, or qualification with, any governmental body or agency under any Specified Law (as defined below) is required to be obtained by the Company or any Guarantor with respect to the issuance and sale by the Company of the Securities to the Initial Purchasers, the issuance of the Guarantees by the Guarantors or the performance by the Company and the Guarantors of their obligations under the Transaction Documents. (The advice in this paragraph is referred to herein as the “**No Consent Opinion**”).

- 10 No registration under the Securities Act of the Securities or the Guarantees is required in connection with the sale of the Securities or the Guarantees to the Initial Purchasers in the manner contemplated by the Purchase Agreement and the Offering Memorandum or in connection with the initial resale of the Securities by the Initial Purchasers in the manner contemplated by the Purchase Agreement and the Offering Memorandum, and the Indenture is not required to be qualified under the Trust Indenture Act, in each case assuming (i) that the purchasers who buy such Securities in the initial resale thereof are qualified institutional buyers as defined in Rule 144A promulgated under the Securities Act, or persons that the Initial Purchasers and any person acting on behalf of the Initial Purchasers reasonably believed to be qualified institutional buyers, or persons other than U.S. persons in connection with offers and sales made in reliance upon Regulation S under the Securities Act, (ii) the accuracy and completeness of the Initial Purchasers' representations set forth in Section [2(d)] of the Purchase Agreement (including Annex I thereto), and those of the Company and the Guarantors set forth in the Purchase Agreement regarding, among other things, the absence of a general solicitation in connection with the sale of such Securities to the Initial Purchasers and the initial resales thereof, and (iii) the compliance with the procedures set forth in the Purchase Agreement by the Initial Purchasers and the Company and the Guarantors.
- 11 The statements set forth in the Time of Sale Information and the Offering Memorandum under the headings "Description of the Notes", "Exchange Offer; Registration Rights" and "Certain U.S. Federal Income Tax Considerations" to the extent that it summarizes laws, governmental rules or regulations or documents referred to therein is correct in all material respects.
- 12 Neither the Company nor any of the Guarantors is and, immediately after the issuance of the Securities to the Initial Purchasers and application of the net proceeds therefrom as described in the Offering Memorandum under the caption "Use of Proceeds," will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended. Except for the activities described in this letter, we have not undertaken any investigation to determine the facts upon which the advice in this letter is based.

We have not undertaken any search of court records for purposes of this letter. We have assumed for purposes of this letter: (i) each document we have reviewed for purposes of this letter is accurate and complete, each such document that is an original is authentic, each such document that is a copy conforms to an authentic original, and all signatures on each such document are genuine; that the parties thereto had the power, corporate or other, to enter into and perform all obligations thereunder; that each such document was duly authorized by all requisite corporate action of parties and that such documents were duly executed and delivered by each party thereto other than the Company and the Guarantors; (ii) that the Purchase Agreement and every other agreement we have examined for purposes of this letter constitutes a valid and binding obligation of each party to that document and that each such party has satisfied all legal requirements that are applicable to such party to the extent necessary to entitle such party to enforce such agreement (except that we make no such assumption in this clause with respect to the Company and the Delaware Guarantors); (iii) that each party to any document is in good standing and duly incorporated or organized under the laws of the state of its incorporation or organization (except that we make no such

assumption in this clause with respect to the Company and the Delaware Guarantors); and (iv) that you have acted in good faith and without notice of any fact which has caused you to reach any conclusion contrary to any of the advice provided in this letter. We have also made other assumptions which we believe to be appropriate for purposes of this letter.

In preparing this letter we have relied without independent verification upon: (i) information contained in certificates obtained from governmental authorities; (ii) factual information represented to be true in the Purchase Agreement and other documents specifically identified at the beginning of this letter as having been read by us; (iii) factual information provided to us by the Company and the Guarantors or their representatives; and (iv) factual information we have obtained from such other sources as we have deemed reasonable. We have assumed that there has been no relevant change or development between the dates as of which the information cited in the preceding sentence was given and the date of this letter and that the information upon which we have relied is accurate and does not omit disclosures necessary to prevent such information from being misleading. For purposes of numbered paragraph [1], we have relied exclusively upon certificates issued by governmental authorities in the relevant jurisdictions and such opinion is not intended to provide any conclusion or assurance beyond that conveyed by those certificates.

While we have reviewed certain corporate records and other documents specifically identified at the beginning of this letter as having been read by us, we have not, except as explicitly indicated in numbered paragraph [11] above, undertaken any other investigation to determine the facts upon which the advice in this letter is based. We can, however, confirm that we do not have knowledge that has caused us to conclude that our reliance and assumptions cited in the two immediately preceding paragraphs are unwarranted. Whenever this letter provides advice about (or based upon) our knowledge of any particular information or about any information which has or has not come to our attention, such advice is based entirely on the actual knowledge at the time this letter is delivered on the date it bears by the lawyers with Kirkland & Ellis LLP at that time who have devoted substantive attention to the negotiation or preparation of the Transaction Documents, the Time of Sale Information and the Offering Memorandum, and the due diligence associated therewith, after consultation with the other lawyers in our firm who spent substantial time representing the Company on other matters.

Each opinion (an “*enforceability opinion*”) in this letter that any particular contract is a valid and binding obligation or is enforceable in accordance with its terms is subject to: (i) the effect of bankruptcy, insolvency, fraudulent conveyance and other similar laws and judicially developed doctrines in this area such as substantive consolidation and equitable subordination; (ii) the effect of general principles of equity; and (iii) other commonly recognized statutory and judicial constraints on enforceability including statutes of limitations. In addition, we do not express any opinion as to the enforceability of any rights to contribution or indemnification which may be violative of public policy underlying any law, rule or regulation (including federal or state securities law, rule or regulation).

“General principles of equity” include but are not limited to: principles limiting the availability of specific performance and injunctive relief; principles which limit the availability of a remedy under certain circumstances where another remedy has been elected; principles requiring reasonableness, good faith and fair dealing in the performance and enforcement of an agreement by the party seeking enforcement; principles which may permit a party to cure a material failure to perform its obligations; and principles affording equitable defenses such as waiver, laches and estoppel. It is possible that terms in a particular contract covered by our enforceability opinion may not prove enforceable for reasons other than those explicitly cited in this letter should an actual enforcement action be brought, but (subject to all the exceptions, qualifications, exclusions and other limitations contained in this letter) such unenforceability would not in our opinion prevent the party entitled to enforce that contract from realizing the principal benefits purported to be provided to that party by the terms in that contract which are covered by our enforceability opinion.

The enforceability opinion related to the Guarantees is further subject to the effect of rules of law that may render guarantees unenforceable under circumstances where, in the absence of an effective consent or waiver by the Guarantors (as to which we express no opinion herein), actions, failures to act or waivers, amendments or replacement of the Indenture or the Securities so radically change the essential nature of the terms and conditions of the guaranteed obligations and the related transactions that, in effect, a new relationship has arisen between the Trustee and the Company or the Guarantors, which is substantially and materially different from that presently contemplated by the Indenture and the Securities.

Except as set forth in the following sentences of this paragraph, our advice on every legal issue addressed in this letter is based exclusively on the internal law of the State of New York, the DGCL or the federal law of the United States (except that we do not opine as to the federal securities laws with respect to the No Conflicts Opinion and the No Consent Opinion), without our having made any investigation as to the applicability of any specific law unless such advice specifically references a specific law (the **“Specified Laws”**), and represents our opinion as to how that issue would be resolved were it to be considered by the highest court in the jurisdiction which enacted such law. None of the opinions or other advice contained in this letter considers or covers, and the term “Specified Law” does not include: (i) any antifraud laws, rules or regulations, (ii) any state securities (or “blue sky”) laws, rules or regulations, (iii) any financial statements or supporting schedules (or any notes to any such statements or schedules) or other financial information derived therefrom set forth in (or omitted from) the Offering Memorandum, (iv) any laws, rules or regulations of the Financial Industry Regulatory Authority, Inc; and (v) any laws, statutes, governmental rules or regulations or decisions which in our experience are not usually considered for or covered by opinions like those contained in this letter or are not generally applicable to transactions of the kind covered by the Purchase Agreement including any regulatory laws or requirements specific to the industry in which you or the Company is engaged. We note that we are not admitted to practice in Delaware

and as such, our opinions are based solely on our review of the General Corporation Law of the State of Delaware and for purposes of this opinion is limited to our review of the statutory provisions of such act as published by Aspen Law & Business, as supplemented through [●], without regard to any regulations promulgated thereunder or any judicial or administrative interpretations thereof. In our opinion, New York state courts would apply New York state law to resolve state law issues arising under the Transaction Documents. We express no opinion as to what law might be applied by any other courts to resolve any issue addressed by our opinion and we express no opinion as to whether any relevant difference exists between the laws upon which our opinions are based and any other laws which may actually be applied to resolve issues which may arise under the Transaction Documents. The manner in which any particular issue would be treated in any actual court case would depend in part on facts and circumstances particular to the case and would also depend on how the court involved chose to exercise the wide discretionary authority generally available to it. This letter is not intended to guarantee the outcome of any legal dispute which may arise in the future.

In addition, none of the opinions or other advice contained in the letter covers or otherwise addresses any of the following types of provisions which may be contained in the Transaction Documents: (i) provisions mandating contribution towards judgments or settlements among various parties; (ii) waivers of benefits and rights to the extent they cannot be waived under applicable law; (iii) provisions providing for liquidated damages, late charges and prepayment charges, in each case if deemed to constitute penalties; (iv) provisions that might require indemnification or contribution in violation of general principles of equity or public policy, including, without limitation, indemnification or contribution obligations that arise out of the failure to comply with applicable state or federal securities laws; or (vi) requirements in the Transaction Documents specifying that provisions thereof may only be waived in writing (these provisions may not be valid, binding or enforceable to the extent that an oral agreement or an implied agreement by trade practice or course of conduct has been created modifying any provision of such documents). This letter does not cover any other laws, statutes, governmental rules or regulations or decisions which in our experience are not usually considered for or covered by opinions like those contained in this letter or are not generally applicable to transactions of the kind covered by the Purchase Agreement.

* * *

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any tax advice contained in this opinion (including any attachments) was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding tax related penalties under the U.S. Internal Revenue Code. The tax advice contained in this opinion (including any attachments) was written to support the promotion or marketing of the transactions or matters addressed by the opinion. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

* * *

This letter speaks as of the time of its delivery on the date it bears. We do not assume any obligation to provide you with any subsequent opinion or advice by reason of any fact about which we did not have knowledge at that time, by reason of any change subsequent to that time in any law, other governmental requirement or interpretation thereof covered by any of our opinions or advice, or for any other reason.

This letter may be relied upon by the Initial Purchasers solely in your capacity as initial purchasers in connection with the sale of the Securities and the Guarantees to you pursuant to the Purchase Agreement occurring today. Without our written consent: (i) no person (including any person that acquires any Securities from you) other than you may rely on this letter for any purpose; (ii) this letter may not be cited or quoted in any financial statement, offering memorandum, prospectus, private placement memorandum or other similar document; (iii) this letter may not be cited or quoted in any other document or communication which might encourage reliance upon this letter by any person or for any purpose excluded by the restrictions in this paragraph; and (iv) copies of this letter may not be furnished to anyone for purposes of encouraging such reliance.

Very truly yours,

KIRKLAND & ELLIS LLP

EXHIBIT A
Opinion Guarantors

<u>Name of Entity</u>	<u>State or Jurisdiction of Organization</u>
Prestige Brands Holdings, Inc.	Delaware
Prestige Personal Care Holdings, Inc.	Delaware
Prestige Personal Care, Inc.	Delaware
Prestige Services Corp.	Delaware
Prestige Brands International, Inc.	Virginia
Prestige Brands Holdings, Inc.	Virginia
Medtech Holdings, Inc.	Delaware
Medtech Products Inc.	Delaware
The Cutex Company	Delaware
The Denorex Company	Delaware
The Spic and Span Company	Delaware
Blacksmith Brands, Inc.	Delaware

EXHIBIT B
Material Contracts

1. Term Loan Credit Agreement, dated January [31], 2012, among Prestige Brands Holdings, Inc., Prestige Brands, Inc., the Guarantors party thereto from time to time, Citibank, N.A., as administrative agent, and the other lenders party thereto from time to time, Citigroup Global Markets, Inc., Morgan Stanley Senior Funding, Inc. and RBC Capital Markets, as joint lead arrangers and joint bookrunners, Morgan Stanley Senior Funding, Inc., as syndication agent, and RBC Capital Markets, as documentation agent.
2. ABL Credit Agreement, dated January [31], 2012, among Prestige Brands Holdings, Inc., Prestige Brands, Inc., the Guarantors party thereto from time to time, Citibank, N.A., as administrative agent, Citibank, N.A., as L/C issuer and swing line lender, and the other lenders party thereto from time to time, Citigroup Global Markets, Inc., Morgan Stanley Senior Funding, Inc. and RBC Capital Markets, as joint lead arrangers and joint bookrunners, Morgan Stanley Senior Funding, Inc., as syndication agent, and RBC Capital Markets, as documentation agent.
3. Indenture, dated March 24, 2010, between Prestige Brands, Inc., Prestige Brands Holdings, Inc., the Guarantors party thereto and U.S. Bank National Association, as trustee, as supplemented by that first supplemental indenture, dated November 1, 2010, between Prestige Brands, Inc., Prestige Brands Holdings, Inc., the Guarantors listed on the signature pages thereto and the Trustee.

Resale Pursuant to Regulation S or Rule 144A. Each Initial Purchaser understands that:

Such Initial Purchaser agrees that it has not offered or sold and will not offer or sell the Securities in the United States or to, or for the benefit or account of, a U.S. Person (other than a distributor), in each case, as defined in Rule 902 of Regulation S (i) as part of its distribution at any time and (ii) otherwise until 40 days after the later of the commencement of the offering of the Securities pursuant hereto and the Closing Date, other than in accordance with Regulation S or another exemption from the registration requirements of the Securities Act. Such Initial Purchaser agrees that, during such 40-day restricted period, it will not cause any advertisement with respect to the Securities (including any “tombstone” advertisement) to be published in any newspaper or periodical or posted in any public place and will not issue any circular relating to the Securities, except such advertisements as permitted by and include the statements required by Regulation S.

Such Initial Purchaser agrees that, at or prior to confirmation of a sale of Securities by it to any distributor, dealer or person receiving a selling concession, fee or other remuneration during the 40-day restricted period referred to in Rule 903 of Regulation S, it will send to such distributor, dealer or person receiving a selling concession, fee or other remuneration a confirmation or notice to substantially the following effect:

“The Securities covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the “Securities Act”), and may not be offered and sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of your distribution at any time or (ii) otherwise until 40 days after the later of the date the Securities were first offered to persons other than distributors in reliance on Regulation S and the Closing Date, except in either case in accordance with Regulation S under the Securities Act (or in accordance with Rule 144A under the Securities Act or to accredited investors in transactions that are exempt from the registration requirements of the Securities Act), and in connection with any subsequent sale by you of the Securities covered hereby in reliance on Regulation S under the Securities Act during the period referred to above to any distributor, dealer or person receiving a selling concession, fee or other remuneration, you must deliver a notice to substantially the foregoing effect. Terms used above have the meanings assigned to them in Regulation S under the Securities Act.”

Such Initial Purchaser agrees that the Securities offered and sold in reliance on Regulation S will be represented upon issuance by a global security that may not be exchanged for definitive securities until the expiration of the 40-day restricted period referred to in Rule 903 of Regulation S and only upon certification of beneficial ownership of such Securities by non-U.S. persons or U.S. persons who purchased such Securities in transactions that were exempt from the registration requirements of the Securities Act.

REGISTRATION RIGHTS AGREEMENT

by and among

Prestige Brands, Inc.
Prestige Brands Holdings, Inc.
Prestige Personal Care Holdings, Inc.
Prestige Personal Care, Inc.
Prestige Services Corp.
Prestige Brands Holdings, Inc.
Prestige Brands International, Inc.
Medtech Holdings, Inc.
Medtech Products Inc.
The Cutex Company
The Denorex Company
The Spic and Span Company
Blacksmith Brands, Inc.

and

Morgan Stanley & Co. LLC
Citigroup Global Markets Inc.
RBC Capital Markets, LLC
Deutsche Bank Securities Inc.

Dated as of January 31, 2012

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of January 31, 2012, by and among Prestige Brands, Inc., a Delaware corporation (the "Company"), Prestige Brands Holdings, Inc., Prestige Personal Care Holdings, Inc., Prestige Personal Care, Inc., Prestige Services Corp., Prestige Brands Holdings, Inc., Prestige Brands International, Inc., Medtech Holdings, Inc., Medtech Products Inc., The Cutex Company, The Denorex Company, The Spic and Span Company and Blacksmith Brands, Inc. (collectively, the "Guarantors"), and Morgan Stanley & Co. LLC, Citigroup Global Markets Inc., RBC Capital Markets, LLC and Deutsche Bank Securities Inc. (each an "Initial Purchaser" and collectively, the "Initial Purchasers"), each of whom has agreed to purchase the Company's 8.125% Senior Notes due 2020 (the "Initial Notes"), which are fully and unconditionally guaranteed by the Guarantors (the "Guarantees"), pursuant to the Purchase Agreement (as defined below). The Initial Notes and the Guarantees attached thereto are herein collectively referred to as the "Initial Securities."

This Agreement is made pursuant to the Purchase Agreement, dated January 24, 2012 (the "Purchase Agreement"), among the Company, the Guarantors and the Initial Purchasers (i) for the benefit of the Initial Purchasers and (ii) for the benefit of the holders from time to time of the Initial Securities, including the Initial Purchasers. In order to induce the Initial Purchasers to purchase the Initial Securities, the Company has agreed to provide the registration rights set forth in this Agreement. The execution and delivery of this Agreement is a condition to the obligations of the Initial Purchasers set forth in Section 5(f) of the Purchase Agreement.

The parties hereby agree as follows:

SECTION 1. *Definitions.* As used in this Agreement, the following capitalized terms shall have the following meanings:

Additional Interest Payment Date: With respect to the Initial Securities, each Interest Payment Date.

Advice: As defined in Section 6(c) hereof.

Broker-Dealer: Any broker or dealer registered under the Exchange Act.

Business Day: Any day other than a Saturday, Sunday or U.S. federal holiday or a day on which banking institutions or trust companies located in New York, New York are authorized or obligated to be closed.

Closing Date: The date of this Agreement.

Commission: The U.S. Securities and Exchange Commission.

Consummate: A registered Exchange Offer shall be deemed "Consummated" for

purposes of this Agreement upon the occurrence of (i) the filing and effectiveness under the Securities Act of the Exchange Offer Registration Statement relating to the Exchange Securities to be issued in the Exchange Offer, (ii) the maintenance of such Registration Statement continuously effective and the keeping of the Exchange Offer open for a period not less than the minimum period required pursuant to Section 3(b) hereof, and (iii) the delivery by the Company to the Registrar under the Indenture of Exchange Securities in the same aggregate principal amount as the aggregate principal amount of Initial Securities that were tendered by Holders thereof pursuant to the Exchange Offer.

Exchange Act: The Securities Exchange Act of 1934, as amended.

Exchange Date: As defined in Section 3 hereof.

Exchange Offer: The registration by the Company under the Securities Act of the Exchange Securities pursuant to a Registration Statement pursuant to which the Company offers the Holders of all outstanding Transfer Restricted Securities the opportunity to exchange all such outstanding Transfer Restricted Securities held by such Holders for Exchange Securities in an aggregate principal amount equal to the aggregate principal amount of the Transfer Restricted Securities tendered in such exchange offer by such Holders.

Exchange Offer Registration Statement: The Registration Statement relating to the Exchange Offer, including the related Prospectus.

Exchange Securities: The 8.125% Senior Notes due 2020, of the same series under the Indenture as the Initial Notes and the Guarantees attached thereto, to be issued to Holders in exchange for Transfer Restricted Securities pursuant to this Agreement.

Exempt Resales: The transactions in which the Initial Purchasers propose to sell the Initial Securities to certain “qualified institutional buyers,” as such term is defined in Rule 144A under the Securities Act and to certain non-U.S. persons pursuant to Regulation S under the Securities Act.

FINRA: Financial Industry Regulatory Authority.

Holders: As defined in Section 2(b) hereof.

Indemnified Holder: As defined in Section 8(a) hereof.

Indenture: The Indenture, dated as of January 31, 2012, by and among the Company, the Guarantors and U.S. Bank National Association, as trustee (the “Trustee”), pursuant to which the Securities are to be issued, as such Indenture is amended or supplemented from time to time in accordance with the terms thereof.

Initial Purchaser: As defined in the preamble hereto.

Initial Notes: As defined in the preamble hereto.

Initial Placement: The issuance and sale by the Company of the Initial Securities to the Initial Purchasers pursuant to the Purchase Agreement.

Initial Securities: As defined in the preamble hereto.

Interest Payment Date: As defined in the Indenture and the Securities.

Person: An individual, partnership, corporation, trust or unincorporated organization, limited liability company or a government or agency or political subdivision thereof.

Prospectus: The prospectus included in a Registration Statement, as amended or supplemented by any prospectus supplement and by all other amendments thereto, including post-effective amendments, and all material incorporated by reference into such prospectus.

Registration Default: As defined in Section 5 hereof.

Registration Statement: Any registration statement of the Company relating to (a) an offering of Exchange Securities pursuant to an Exchange Offer or (b) the registration for resale of Transfer Restricted Securities pursuant to the Shelf Registration Statement, which is filed pursuant to the provisions of this Agreement, in each case, including the Prospectus included therein, all amendments and supplements thereto (including post-effective amendments) and all exhibits and material incorporated by reference therein.

Securities: As defined in the Purchase Agreement.

Securities Act: The Securities Act of 1933, as amended.

Shelf Registration Statement: As defined in Section 4(a) hereof.

Transfer Restricted Securities: Each Initial Security, until the earliest to occur of (a) the date on which such Initial Security is exchanged in the Exchange Offer for an Exchange Security entitled to be resold to the public by the Holder thereof without complying with the prospectus delivery requirements of the Securities Act, (b) the date on which such Initial Security has been effectively registered under the Securities Act and disposed of in accordance with a Shelf Registration Statement and (c) the date on which such Initial Security is distributed to the public by a Broker-Dealer pursuant to the "Plan of Distribution" contemplated by the Exchange Offer Registration Statement (including delivery of the Prospectus contained therein).

Trust Indenture Act: The Trust Indenture Act of 1939, as amended.

Underwritten Registration or Underwritten Offering: A registration in which securities

of the Company are sold to an underwriter for reoffering to the public.

SECTION 2. *Securities Subject to this Agreement.*

(a) *Transfer Restricted Securities.* The securities entitled to the benefits of this Agreement are the Transfer Restricted Securities.

(b) *Holders of Transfer Restricted Securities.* A Person is deemed to be a holder of Transfer Restricted Securities (each, a “Holder”) whenever such Person owns Transfer Restricted Securities.

SECTION 3. *Registered Exchange Offer.*

(a) Unless the Exchange Offer shall not be permissible under applicable law or Commission policy (after the procedures set forth in Section 6(a) hereof have been complied with), each of the Company and the Guarantors shall use its commercially reasonable efforts (i) to file with the Commission a Registration Statement under the Securities Act relating to the Exchange Securities and the Exchange Offer, (ii) to cause such Registration Statement to become effective, (iii) in connection with the foregoing, (A) file all pre-effective amendments to such Registration Statement as may be necessary in order to cause such Registration Statement to become effective, (B) if applicable, file a post-effective amendment to such Registration Statement pursuant to Rule 430A under the Securities Act and (C) cause all necessary filings in connection with the registration and qualification of the Exchange Securities to be made under the state securities or blue sky laws of such jurisdictions as are necessary to permit Consummation of the Exchange Offer, and (iv) upon the effectiveness of such Registration Statement, commence the Exchange Offer. Each of the Company and the Guarantors shall use its commercially reasonable efforts to Consummate the Exchange Offer not later than 365 days following the Closing Date (or if such 365th day is not a Business Day, the next succeeding Business Day) (the “Exchange Date”). The Exchange Offer shall be on the appropriate form permitting registration of the Exchange Securities to be offered in exchange for the Transfer Restricted Securities and to permit resales of Initial Securities held by Broker-Dealers as contemplated by Section 3(c) hereof.

(b) The Company and the Guarantors shall cause the Exchange Offer Registration Statement to be effective continuously and shall keep the Exchange Offer open for a period of not less than the minimum period required under applicable federal and state securities laws to Consummate the Exchange Offer; *provided, however*, that in no event shall such period be less than 20 Business Days after the date notice of the Exchange Offer is mailed to the Holders. The Company shall cause the Exchange Offer to comply with all applicable federal and state securities laws. No securities other than the Exchange Securities shall be included in the Exchange Offer Registration Statement.

(c) The Company shall indicate in a “Plan of Distribution” section contained in the Prospectus forming a part of the Exchange Offer Registration Statement that any Broker-Dealer who holds Initial Securities that are Transfer Restricted Securities and that were acquired for its

own account as a result of market-making activities or other trading activities (other than Transfer Restricted Securities acquired directly from the Company), may exchange such Initial Securities pursuant to the Exchange Offer; however, such Broker-Dealer may be deemed to be an “underwriter” within the meaning of the Securities Act and must, therefore, deliver a prospectus meeting the requirements of the Securities Act in connection with any resales of the Exchange Securities received by such Broker-Dealer in the Exchange Offer, which prospectus delivery requirement may be satisfied by the delivery by such Broker-Dealer of the Prospectus contained in the Exchange Offer Registration Statement. Such “Plan of Distribution” section shall also contain all other information with respect to such resales by Broker-Dealers that the Commission may require in order to permit such resales pursuant thereto, but such “Plan of Distribution” shall not name any such Broker-Dealer or disclose the amount of Initial Securities held by any such Broker-Dealer except to the extent required by the Commission as a result of a change in policy after the date of this Agreement.

Each of the Company and the Guarantors shall use its commercially reasonable efforts to keep the Exchange Offer Registration Statement continuously effective, supplemented and amended as required by the provisions of Section 6(c) hereof to the extent necessary to ensure that it is available for resales of Initial Securities acquired by Broker-Dealers for their own accounts as a result of market-making activities or other trading activities, and to ensure that it conforms with the requirements of this Agreement, the Securities Act and the policies, rules and regulations of the Commission as announced from time to time, for a period ending on the earlier of (i) 180 days from the date on which the Exchange Offer Registration Statement is declared effective and (ii) the date on which a Broker-Dealer is no longer required to deliver a prospectus in connection with market-making or other trading activities.

The Company shall provide sufficient copies of the latest version of such Prospectus to Broker-Dealers promptly upon request at any time during such 180-day (or shorter as provided in the foregoing sentence) period in order to facilitate such resales.

SECTION 4. *Shelf Registration.*

(a) *Shelf Registration.* If (i) the Company is not required to file an Exchange Offer Registration Statement or to consummate the Exchange Offer because the Exchange Offer is not permitted by applicable law or Commission policy (after the procedures set forth in Section 6(a) hereof have been complied with), (ii) for any reason the Exchange Offer is not Consummated by the Exchange Date, or (iii) with respect to any Holder of Transfer Restricted Securities (A) such Holder is prohibited by applicable law or Commission policy from participating in the Exchange Offer, or (B) such Holder may not resell the Exchange Securities acquired by it in the Exchange Offer to the public without delivering a prospectus and that the Prospectus contained in the Exchange Offer Registration Statement is not appropriate or available for such resales by such Holder, or (C) such Holder is a Broker-Dealer and holds Initial Securities acquired directly from the Company or one of its affiliates, then, upon such Holder’s request, the Company and the Guarantors shall

- (x) cause to be filed a shelf registration statement pursuant to Rule 415 under

the Securities Act, which may be an amendment to the Exchange Offer Registration Statement (in either event, the “Shelf Registration Statement”) within 30 days after the Exchange Date, which Shelf Registration Statement shall provide for resales of all Transfer Restricted Securities the Holders of which shall have provided the information required pursuant to Section 4(b) hereof; and

(y) use their commercially reasonable efforts to cause such Shelf Registration Statement to be declared effective by the Commission.

Each of the Company and the Guarantors shall use its commercially reasonable efforts to keep such Shelf Registration Statement continuously effective, supplemented and amended as required by the provisions of Sections 6(b) and (c) hereof to the extent necessary to ensure that it is available for resales of Initial Securities by the Holders of Transfer Restricted Securities entitled to the benefit of this Section 4(a), and to ensure that it conforms with the requirements of this Agreement, the Securities Act and the policies, rules and regulations of the Commission as announced from time to time, for a period of at least one year following the Closing Date (or a shorter period that will terminate when all the Initial Securities covered by such Shelf Registration Statement have been sold pursuant to such Shelf Registration Statement).

(b) *Provision by Holders of Certain Information in Connection with the Shelf Registration Statement.* No Holder of Transfer Restricted Securities may include any of its Transfer Restricted Securities in any Shelf Registration Statement pursuant to this Agreement unless and until such Holder furnishes to the Company in writing, within 20 Business Days after receipt of a request therefor, such information as the Company may reasonably request for use in connection with any Shelf Registration Statement or Prospectus or preliminary Prospectus included therein. Each Holder as to which any Shelf Registration Statement is being effected agrees to furnish promptly to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such Holder not materially misleading.

SECTION 5. *Additional Interest.* If (i) the Exchange Offer has not been Consummated by the Exchange Date, (ii) any Shelf Registration Statement, if required hereby, has not been declared effective by the Commission prior to the Exchange Date (or, if required pursuant to Section 4(a) (C), has not been declared effective by the Commission prior to the later of the Exchange Date and the date that is 90 days after such Holder makes such request pursuant to Section 4(a) hereof) or (iii) any Shelf Registration Statement required by this Agreement has been declared effective but ceases to be effective at any time at which it is required to be effective under this Agreement (each such event referred to in clauses (i) through (iii), a “Registration Default”), the Company hereby agrees that the interest rate borne by the Transfer Restricted Securities shall be increased by 0.25% per annum during the 90-day period immediately following the occurrence of any Registration Default and shall increase by 0.25% per annum at the end of each subsequent 90-day period, but in no event shall such increase exceed 1.00% per annum. Following the cure of all Registration Defaults relating to any particular Transfer Restricted Securities, the interest rate borne by the relevant Transfer

Restricted Securities will be reduced to the original interest rate borne by such Transfer Restricted Securities; *provided, however*, that, if after any such reduction in interest rate, a different Registration Default occurs, the interest rate borne by the relevant Transfer Restricted Securities shall again be increased pursuant to the foregoing provisions.

All obligations of the Company and the Guarantors set forth in the preceding paragraph that are outstanding with respect to any Transfer Restricted Security at the time such security ceases to be a Transfer Restricted Security shall survive until such time as all such obligations with respect to such security shall have been satisfied in full.

SECTION 6. *Registration Procedures.*

(a) *Exchange Offer Registration Statement.* In connection with the Exchange Offer, the Company and the Guarantors shall comply with all of the provisions of Section 6(c) hereof, shall use their commercially reasonable efforts to effect such exchange to permit the sale of Transfer Restricted Securities being sold in accordance with the intended method or methods of distribution thereof, and shall comply with all of the following provisions:

(i) If in the reasonable opinion of counsel to the Company there is a question as to whether the Exchange Offer is permitted by applicable law, each of the Company and the Guarantors hereby agrees to seek a no-action letter or other favorable decision from the Commission allowing the Company and the Guarantors to consummate an Exchange Offer for such Initial Securities. Each of the Company and the Guarantors hereby agrees to pursue the issuance of such a decision to the Commission staff level but shall not be required to take commercially unreasonable action to effect a change of Commission policy. Each of the Company and the Guarantors hereby agrees, however, to (A) participate in telephonic conferences with the Commission, (B) deliver to the Commission staff an analysis prepared by counsel to the Company setting forth the legal bases, if any, upon which such counsel has concluded that such an Exchange Offer should be permitted and (C) diligently pursue a favorable resolution by the Commission staff of such submission.

(ii) As a condition to its participation in the Exchange Offer pursuant to the terms of this Agreement, each Holder of Transfer Restricted Securities shall furnish, upon the request of the Company, prior to the consummation thereof, a written representation to the Company (which may be contained in the letter of transmittal contemplated by the Exchange Offer Registration Statement) to the effect that (A) it is not an affiliate of the Company, (B) it is not engaged in, and does not intend to engage in, and has no arrangement or understanding with any Person to participate in, a distribution of the Exchange Securities to be issued in the Exchange Offer and (C) it is acquiring the Exchange Securities in its ordinary course of business. In addition, all such Holders of Transfer Restricted Securities shall otherwise cooperate in the Company's preparations for the Exchange Offer. Each Holder hereby acknowledges and agrees that any Broker-Dealer and any such Holder using the Exchange Offer to participate in a distribution of the securities to be acquired in the Exchange Offer (1) could not under Commission

policy as in effect on the date of this Agreement rely on the position of the Commission enunciated in Morgan Stanley and Co., Inc. (available June 5, 1991) and Exxon Capital Holdings Corporation (available May 13, 1988), as interpreted in the Commission's letter to Shearman & Sterling dated July 2, 1993, and similar no-action letters (which may include any no-action letter obtained pursuant to clause (i) above), and (2) must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction and that such a secondary resale transaction should be covered by an effective registration statement containing the selling security holder information required by Item 507 or 508, as applicable, of Regulation S-K if the resales are of Exchange Securities obtained by such Holder in exchange for Initial Securities acquired by such Holder directly from the Company.

(b) *Shelf Registration Statement.* In connection with the Shelf Registration Statement, each of the Company and the Guarantors shall comply with all the provisions of Section 6(c) hereof and shall use its commercially reasonable efforts to effect such registration to permit the sale of the Transfer Restricted Securities being sold in accordance with the intended method or methods of distribution thereof, and pursuant thereto each of the Company and the Guarantors will as expeditiously as possible prepare and file with the Commission a Registration Statement relating to the registration on any appropriate form under the Securities Act, which form shall be available for the sale of the Transfer Restricted Securities in accordance with the intended method or methods of distribution thereof.

(c) *General Provisions.* In connection with any Registration Statement and any Prospectus required by this Agreement to permit the sale or resale of Transfer Restricted Securities (including, without limitation, any Registration Statement and the related Prospectus required to permit resales of Initial Securities by Broker-Dealers), each of the Company and the Guarantors shall:

(i) use its commercially reasonable efforts to keep such Registration Statement continuously effective and provide all requisite financial statements (including, if required by the Securities Act or any regulation thereunder, financial statements of the Guarantors for the period specified in Section 3 or 4 hereof, as applicable); upon the occurrence of any event that would cause any such Registration Statement or the Prospectus contained therein (A) to contain a material misstatement or omission or (B) not to be effective and usable for resale of Transfer Restricted Securities during the period required by this Agreement, the Company shall file promptly an appropriate amendment to such Registration Statement, in the case of clause (A), correcting any such misstatement or omission, and, in the case of either clause (A) or (B), use its commercially reasonable efforts to cause such amendment to be declared effective and such Registration Statement and the related Prospectus to become usable for their intended purpose(s) as soon as practicable thereafter;

(ii) prepare and file with the Commission such amendments and post-effective amendments to the applicable Registration Statement as may be necessary to keep the Registration Statement effective for the applicable period set forth in Section 3 or 4

hereof, as applicable, or such shorter period as will terminate when all Transfer Restricted Securities covered by such Registration Statement have been sold; cause the Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act, and to comply fully with the applicable provisions of Rules 424 and 430A under the Securities Act in a timely manner; and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the sellers thereof set forth in such Registration Statement or supplement to the Prospectus;

(iii) advise the underwriter(s), if any, and selling Holders promptly and, if requested by such Persons, to confirm such advice in writing, (A) when the Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to any Registration Statement or any post-effective amendment thereto, when the same has become effective, (B) of any request by the Commission for amendments to the Registration Statement or amendments or supplements to the Prospectus or for additional information relating thereto, (C) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement under the Securities Act or of the suspension by any state securities commission of the qualification of the Transfer Restricted Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for any of the preceding purposes, (D) of the existence of any fact or the happening of any event that makes any statement of a material fact made in the Registration Statement, the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Registration Statement or the Prospectus in order to make the statements therein not misleading. If at any time the Commission shall issue any stop order suspending the effectiveness of the Registration Statement, or any state securities commission or other regulatory authority shall issue an order suspending the qualification or exemption from qualification of the Transfer Restricted Securities under state securities or blue sky laws, each of the Company and the Guarantors shall use its commercially reasonable efforts to obtain the withdrawal or lifting of such order at the earliest possible time;

(iv) furnish without charge to each of the Initial Purchasers, each selling Holder named in any Registration Statement, and each of the underwriter(s), if any, before filing with the Commission, copies of any Registration Statement or any Prospectus included therein or any amendments or supplements to any such Registration Statement or Prospectus (including all documents incorporated by reference after the initial filing of such Registration Statement), which documents shall be subject to the review and comment of such Holders and underwriter(s) in connection with such sale, if any, for a period of at least five Business Days, and the Company shall not file any such Registration Statement or Prospectus or any amendment or supplement to any such Registration Statement or Prospectus (including all such documents incorporated by reference) to which an Initial Purchaser of Transfer Restricted Securities covered by such Registration Statement or the underwriter(s), if any, shall reasonably object in writing

within five Business Days after the receipt thereof (such objection to be deemed timely made upon confirmation of telecopy transmission within such period). The objection of an Initial Purchaser or underwriter, if any, shall be deemed to be reasonable if such Registration Statement, amendment, Prospectus or supplement, as applicable, as proposed to be filed, contains a material misstatement or omission;

(v) make available at reasonable times for inspection by the Initial Purchasers, the managing underwriter(s), if any, participating in any disposition pursuant to such Registration Statement and any attorney or accountant retained by such Initial Purchasers or any of the underwriter(s), financial and other records, pertinent corporate documents and properties reasonably requested of each of the Company and the Guarantors and cause the Company's and the Guarantors' officers, directors and employees to supply all information reasonably requested by any such Holder, underwriter, attorney or accountant in connection with such Registration Statement or any post-effective amendment thereto subsequent to the filing thereof and prior to its effectiveness and to participate in meetings with investors to the extent requested by the managing underwriter(s), if any;

(vi) if requested by any selling Holders or the underwriter(s), if any, promptly incorporate in any Registration Statement or Prospectus, pursuant to a supplement or post-effective amendment if necessary, such information as such selling Holders and underwriter(s), if any, may reasonably request to have included therein, including, without limitation, information relating to the "Plan of Distribution" of the Transfer Restricted Securities, information with respect to the principal amount of Transfer Restricted Securities being sold to such underwriter(s), the purchase price being paid therefor and any other terms of the offering of the Transfer Restricted Securities to be sold in such offering; and make all required filings of such Prospectus supplement or post-effective amendment as soon as practicable after the Company is notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment;

(vii) cause the Transfer Restricted Securities covered by the Registration Statement to be rated with the appropriate rating agencies, if so requested by the Holders of a majority in aggregate principal amount of Securities covered thereby or the underwriter(s), if any;

(viii) furnish to each Initial Purchaser, each selling Holder and each of the underwriter(s), if any, without charge, at least one copy of the Registration Statement, as first filed with the Commission, and of each amendment thereto, including financial statements and schedules, all documents incorporated by reference therein and all exhibits (including exhibits incorporated therein by reference);

(ix) deliver to each selling Holder and each of the underwriter(s), if any, without charge, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such Persons reasonably may request; each of the Company and the Guarantors hereby consents to the use of the Prospectus and any

amendment or supplement thereto by each of the selling Holders and each of the underwriter(s), if any, in connection with the offering and the sale of the Transfer Restricted Securities covered by the Prospectus or any amendment or supplement thereto;

(x) enter into such agreements (including an underwriting agreement), and make such representations and warranties, and take all such other actions in connection therewith as are reasonable and customary in order to expedite or facilitate the disposition of the Transfer Restricted Securities pursuant to any Registration Statement contemplated by this Agreement, all to such extent as may be requested by any Initial Purchaser or by any Holder of Transfer Restricted Securities or underwriter in connection with any sale or resale pursuant to any Registration Statement contemplated by this Agreement; and whether or not an underwriting agreement is entered into and whether or not the registration is an Underwritten Registration, each of the Company and the Guarantors shall:

(A) furnish to each Initial Purchaser, each selling Holder and each underwriter, if any, in such substance and scope as they may request and as are customarily made by issuers to underwriters in primary underwritten offerings, upon the date of the Consummation of the Exchange Offer or, if applicable, the effectiveness of the Shelf Registration Statement:

(1) a certificate, dated the date of Consummation of the Exchange Offer or the date of effectiveness of the Shelf Registration Statement, as the case may be, signed by (y) the Chairman of the Board, Chief Executive Officer or the President and (z) a principal financial or accounting officer of each of the Company and the Guarantors, confirming, as of the date thereof, the matters set forth in paragraphs (i), (ii) and (iii) of Section 5(e) of the Purchase Agreement and such other matters as such parties may reasonably request;

(2) an opinion, dated the date of Consummation of the Exchange Offer or the date of effectiveness of the Shelf Registration Statement, as the case may be, of counsel for the Company and the Guarantors, covering the matters set forth in Section 5(c) of the Purchase Agreement and such other matter as such parties may reasonably request, and in any event including a statement to the effect that such counsel has participated in conferences with officers and other representatives of the Company and the Guarantors, representatives of the independent public accountants for the Company and the Guarantors, representatives of the underwriter(s), if any, and counsel to the underwriter(s), if any, in connection with the preparation of such Registration Statement and the related Prospectus and have considered the matters required to be stated therein and the statements contained therein, although such counsel has not independently verified the accuracy, completeness or fairness of such

statements; and that such counsel advises that, on the basis of the foregoing, no facts came to such counsel's attention that caused such counsel to believe that the applicable Registration Statement, at the time such Registration Statement or any post-effective amendment thereto became effective, and, in the case of the Exchange Offer Registration Statement, as of the date of Consummation, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus contained in such Registration Statement as of its date and, in the case of the opinion dated the date of Consummation of the Exchange Offer, as of the date of Consummation, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein not misleading. Without limiting the foregoing, such counsel may state further that such counsel assumes no responsibility for, and has not independently verified, the accuracy, completeness or fairness of the financial statements, notes and schedules and other financial data included in any Registration Statement contemplated by this Agreement or the related Prospectus; and

(3) a customary comfort letter, dated the date of effectiveness of the Shelf Registration Statement, from the Company's independent accountants, in the customary form and covering matters of the type customarily requested to be covered in comfort letters by underwriters in connection with primary underwritten offerings, and covering or affirming the matters set forth in the comfort letters delivered pursuant to Section 5(a) of the Purchase Agreement, without exception;

(B) set forth in full or incorporate by reference in the underwriting agreement, if any, the indemnification provisions and procedures of Section 8 hereof with respect to all parties to be indemnified pursuant to said Section; and

(C) deliver such other documents and certificates as may be reasonably requested by such parties to evidence compliance with Section 6(c)(x)(A) hereof and with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company or any of the Guarantors pursuant to this Section 6(c)(x), if any.

If at any time the representations and warranties of the Company and the Guarantors contemplated in Section 6(c)(x)(A)(1) hereof cease to be true and correct, the Company or the Guarantors shall so advise the Initial Purchasers and the underwriter(s), if any, and each selling Holder promptly and, if requested by such Persons, shall confirm such advice in writing;

(xi) prior to any public offering of Transfer Restricted Securities, cooperate

with the selling Holders, the underwriter(s), if any, and their respective counsel in connection with the registration and qualification of the Transfer Restricted Securities under the state securities or blue sky laws of such jurisdictions as the selling Holders or underwriter(s), if any, may request and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Transfer Restricted Securities covered by the Shelf Registration Statement; *provided, however*, that none of the Company or the Guarantors shall be required to register or qualify as a foreign corporation where it is not then so qualified or to take any action that would subject it to the service of process in suits or to taxation, other than as to matters and transactions relating to the Registration Statement, in any jurisdiction where it is not then so subject;

(xii) shall issue, upon the request of any Holder of Initial Securities covered by the Shelf Registration Statement, Exchange Securities having an aggregate principal amount equal to the aggregate principal amount of Initial Securities surrendered to the Company by such Holder in exchange therefor or being sold by such Holder; such Exchange Securities to be registered in the name of such Holder or in the name of the purchaser(s) of such Securities, as the case may be; in return, the Initial Securities held by such Holder shall be surrendered to the Company for cancellation;

(xiii) cooperate with the selling Holders and the underwriter(s), if any, to facilitate the timely preparation and delivery of certificates representing Transfer Restricted Securities to be sold and not bearing any restrictive legends; and enable such Transfer Restricted Securities to be in such denominations and registered in such names as the Holders or the underwriter(s), if any, may request at least two Business Days prior to any sale of Transfer Restricted Securities made by such Holders or underwriter(s);

(xiv) use its commercially reasonable efforts to cause the Transfer Restricted Securities covered by the Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter(s), if any, to consummate the disposition of such Transfer Restricted Securities, subject to the proviso contained in Section 6(c)(xi) hereof;

(xv) if any fact or event contemplated by Section 6(c)(iii)(D) hereof shall exist or have occurred, prepare a supplement or post-effective amendment to the Registration Statement or related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of Transfer Restricted Securities, the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein not misleading;

(xvi) provide a CUSIP number for all Securities not later than the effective date of the Registration Statement covering such Securities and provide the Trustee under the Indenture with printed certificates for such Securities which are in a form eligible for deposit with the Depository Trust Company and take all other action necessary to ensure

that all such Securities are eligible for deposit with the Depository Trust Company;

(xvii) cooperate and assist in any filings required to be made with the FINRA and in the performance of any due diligence investigation by any underwriter (including any “qualified independent underwriter”) that is required to be retained in accordance with the rules and regulations of the FINRA;

(xviii) otherwise use its best commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, and make generally available to its security holders, as soon as practicable, a consolidated earnings statement meeting the requirements of Rule 158 of the Securities Act (which need not be audited) for the twelve-month period (A) commencing at the end of any fiscal quarter in which Transfer Restricted Securities are sold to underwriters in a firm commitment or best efforts Underwritten Offering or (B) if not sold to underwriters in such an offering, beginning with the first month of the Company’s first fiscal quarter commencing after the effective date of the Registration Statement;

(xix) cause the Indenture to be qualified under the Trust Indenture Act not later than the effective date of the first Registration Statement required by this Agreement, and, in connection therewith, cooperate with the Trustee and the Holders of Securities to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the Trust Indenture Act; and to execute and use its commercially reasonable efforts to cause the Trustee to execute, all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner;

(xx) cause all Securities covered by the Registration Statement to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed if requested by the Holders of a majority in aggregate principal amount of Initial Securities or the managing underwriter(s), if any; and

(xxi) provide promptly to each Holder upon request each document filed with the Commission pursuant to the requirements of Section 13 and Section 15 of the Exchange Act.

Each Holder agrees by acquisition of a Transfer Restricted Security that, upon receipt of any notice from the Company of the existence of any fact of the kind described in Section 6(c)(iii)(D) hereof, such Holder will forthwith discontinue disposition of Transfer Restricted Securities pursuant to the applicable Registration Statement until such Holder’s receipt of the copies of the supplemented or amended Prospectus contemplated by Section 6(c)(xv) hereof, or until it is advised in writing (the “Advice”) by the Company that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus. If so directed by the Company, each Holder will

deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Transfer Restricted Securities that was current at the time of receipt of such notice. In the event the Company shall give any such notice, the time period regarding the effectiveness of such Registration Statement set forth in Section 3 or 4 hereof, as applicable, shall be extended by the number of days during the period from and including the date of the giving of such notice pursuant to Section 6(c)(iii)(D) hereof to and including the date when each selling Holder covered by such Registration Statement shall have received the copies of the supplemented or amended Prospectus contemplated by Section 6(c)(xv) hereof or shall have received the Advice; *provided, however*, that no such extension shall be taken into account in determining whether Additional Interest is due pursuant to Section 5 hereof or the amount of such Additional Interest, it being agreed that the Company's option to suspend use of a Registration Statement pursuant to this paragraph shall be treated as a Registration Default for purposes of Section 5 hereof.

SECTION 7. *Registration Expenses.*

(a) All expenses incident to the Company's and the Guarantors' performance of or compliance with this Agreement will be borne by the Company and the Guarantors, jointly and severally, regardless of whether a Registration Statement becomes effective, including, without limitation: (i) all registration and filing fees and expenses (including filings made by any Initial Purchaser or Holder with the FINRA (and, if applicable, the fees and expenses of any "qualified independent underwriter" and its counsel that may be required by the rules and regulations of the FINRA)); (ii) all fees and expenses of compliance with federal securities and state securities or blue sky laws; (iii) all expenses of printing (including printing certificates for the Exchange Securities to be issued in the Exchange Offer and printing of Prospectuses), messenger and delivery services and telephone; (iv) all fees and disbursements of counsel for the Company, the Guarantors and, subject to Section 7(b) hereof, the Holders of Transfer Restricted Securities; (v) all application and filing fees in connection with listing the Exchange Securities on a securities exchange or automated quotation system pursuant to the requirements thereof; and (vi) all fees and disbursements of independent certified public accountants of the Company and the Guarantors (including the expenses of any special audit and comfort letters required by or incident to such performance).

Each of the Company and the Guarantors will, in any event, bear its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit and the fees and expenses of any Person, including special experts, retained by the Company or the Guarantors.

(b) In connection with any Registration Statement required by this Agreement (including, without limitation, the Exchange Offer Registration Statement and the Shelf Registration Statement), the Company and the Guarantors, jointly and severally, will reimburse the Initial Purchasers and the Holders of Transfer Restricted Securities being tendered in the Exchange Offer and/or resold pursuant to the "Plan of Distribution" contained in the Exchange Offer Registration Statement or registered pursuant to the Shelf Registration Statement, as applicable, for the reasonable fees and disbursements of not more than one counsel, who shall be

Cahill Gordon & Reindel LLP or such other counsel as may be chosen by the Holders of a majority in principal amount of the Transfer Restricted Securities for whose benefit such Registration Statement is being prepared.

SECTION 8. *Indemnification.*

(a) The Company and the Guarantors, jointly and severally, agree to indemnify and hold harmless (i) each Holder and (ii) each Person, if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) any Holder (any of the Persons referred to in this clause (ii) being hereinafter referred to as a “controlling person”) and (iii) the respective officers, directors, partners, employees, representatives and agents of any Holder or any controlling person (any Person referred to in clause (i), (ii) or (iii) may hereinafter be referred to as an “Indemnified Holder”), to the fullest extent lawful, from and against any and all losses, claims, damages, liabilities, judgments, actions and expenses (including, without limitation, and as incurred, reimbursement of all reasonable costs of investigating, preparing, pursuing, settling, compromising, paying or defending any claim or action, or any investigation or proceeding by any governmental agency or body, commenced or threatened, including the reasonable fees and expenses of counsel to any Indemnified Holder), joint or several, directly or indirectly caused by, related to, based upon, arising out of or in connection with any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or Prospectus (or any amendment or supplement thereto), or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages, liabilities or expenses are caused by an untrue statement or omission or alleged untrue statement or omission that is made in reliance upon and in conformity with information relating to any of the Holders furnished in writing to the Company by any of the Holders expressly for use therein. This indemnity agreement shall be in addition to any liability which the Company or any of the Guarantors may otherwise have.

In case any action or proceeding (including any governmental or regulatory investigation or proceeding) shall be brought or asserted against any of the Indemnified Holders with respect to which indemnity may be sought against the Company or the Guarantors, such Indemnified Holder (or the Indemnified Holder controlled by such controlling person) shall promptly notify the Company and the Guarantors in writing; *provided, however*, that the failure to give such notice shall not relieve any of the Company or the Guarantors of its obligations pursuant to this Agreement. Such Indemnified Holder shall have the right to employ its own counsel in any such action and the fees and expenses of such counsel shall be paid, as incurred, by the Company and the Guarantors (regardless of whether it is ultimately determined that an Indemnified Holder is not entitled to indemnification hereunder). The Company and the Guarantors shall not, in connection with any one such action or proceeding or separate but substantially similar or related actions or proceedings in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) at any time for such Indemnified Holders, which firm shall be designated by the Holders.

The Company and the Guarantors shall be liable for any settlement of any such action or proceeding effected with the Company's and the Guarantors' prior written consent, which consent shall not be withheld unreasonably, and each of the Company and the Guarantors agrees to indemnify and hold harmless any Indemnified Holder from and against any loss, claim, damage, liability or expense by reason of any settlement of any action effected with the written consent of the Company and the Guarantors. The Company and the Guarantors shall not, without the prior written consent of each Indemnified Holder, settle or compromise or consent to the entry of judgment in or otherwise seek to terminate any pending or threatened action, claim, litigation or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not any Indemnified Holder is a party thereto), unless such settlement, compromise, consent or termination includes an unconditional release of each Indemnified Holder from all liability arising out of such action, claim, litigation or proceeding.

(b) Each Holder of Transfer Restricted Securities agrees, severally and not jointly, to indemnify and hold harmless the Company, the Guarantors and their respective directors, officers of the Company and the Guarantors who sign a Registration Statement, and any Person controlling (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Company or any of the Guarantors, and the respective officers, directors, partners, employees, representatives and agents of each such Person, to the same extent as the foregoing indemnity from the Company and the Guarantors to each of the Indemnified Holders, but only with respect to claims and actions based on information relating to such Holder furnished in writing by such Holder expressly for use in any Registration Statement. In case any action or proceeding shall be brought against the Company, the Guarantors or their respective directors or officers or any such controlling person in respect of which indemnity may be sought against a Holder of Transfer Restricted Securities, such Holder shall have the rights and duties given the Company and the Guarantors, and the Company, the Guarantors, their respective directors and officers and such controlling person shall have the rights and duties given to each Holder by the preceding paragraph.

(c) If the indemnification provided for in this Section 8 is unavailable to an indemnified party under Section 8(a) or (b) hereof (other than by reason of exceptions provided in those Sections) in respect of any losses, claims, damages, liabilities, judgments, actions or expenses referred to therein, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantors, on the one hand, and the Holders, on the other hand, from the Initial Placement (which in the case of the Company and the Guarantors shall be deemed to be equal to the total gross proceeds to the Company and the Guarantors from the Initial Placement), the amount of Additional Interest which did not become payable as a result of the filing of the Registration Statement resulting in such losses, claims, damages, liabilities, judgments actions or expenses, and such Registration Statement, or if such allocation is not permitted by applicable law, the relative fault of the Company and the Guarantors, on the one hand, and the Holders, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative fault of the

Company on the one hand and of the Indemnified Holder on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or any of the Guarantors, on the one hand, or the Indemnified Holders, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in the second paragraph of Section 8(a) hereof, any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim.

The Company, the Guarantors and each Holder of Transfer Restricted Securities agree that it would not be just and equitable if contribution pursuant to this Section 8(c) were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or expenses referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, none of the Holders (and its related Indemnified Holders) shall be required to contribute, in the aggregate, any amount in excess of the amount by which the total discount received by such Holder with respect to the Initial Securities exceeds the amount of any damages which such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The Holders' obligations to contribute pursuant to this Section 8(c) are several in proportion to the respective principal amount of Initial Securities held by each of the Holders hereunder and not joint.

SECTION 9. *Rule 144A.* Each of the Company and the Guarantors hereby agrees with each Holder, for so long as any Transfer Restricted Securities remain outstanding, to make available to any Holder or beneficial owner of Transfer Restricted Securities in connection with any sale thereof and any prospective purchaser of such Transfer Restricted Securities from such Holder or beneficial owner, the information required by Rule 144A(d)(4) under the Securities Act in order to permit resales of such Transfer Restricted Securities pursuant to Rule 144A under the Securities Act.

SECTION 10. *Participation in Underwritten Registrations.* No Holder may participate in any Underwritten Registration hereunder unless such Holder (a) agrees to sell such Holder's Transfer Restricted Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents required under the terms of such underwriting arrangements.

SECTION 11. *Selection of Underwriters.* The Holders of Transfer Restricted Securities covered by the Shelf Registration Statement who desire to do so may sell such Transfer Restricted Securities in an Underwritten Offering. In any such Underwritten Offering, the investment banker(s) and managing underwriter(s) that will administer such offering will be selected by the Holders of a majority in aggregate principal amount of the Transfer Restricted Securities included in such offering; *provided, however*, that such investment banker(s) and managing underwriter(s) must be reasonably satisfactory to the Company.

SECTION 12. *Miscellaneous.*

(a) *Remedies.* Each of the Company and the Guarantors hereby agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agree to waive the defense in any action for specific performance that a remedy at law would be adequate.

(b) *No Inconsistent Agreements.* Each of the Company and the Guarantors will not on or after the date of this Agreement enter into any agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Neither the Company nor any of the Guarantors has previously entered into any agreement granting any registration rights with respect to its securities to any Person. The rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of the Company's or any of the Guarantors' securities under any agreement in effect on the date hereof.

(c) *Adjustments Affecting the Securities.* The Company will not take any action, or permit any change to occur, with respect to the Securities that would materially and adversely affect the ability of the Holders to Consummate any Exchange Offer.

(d) *Amendments and Waivers.* The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given unless the Company has (i) in the case of Section 5 hereof and this Section 12(d)(i), obtained the written consent of Holders of all outstanding Transfer Restricted Securities and (ii) in the case of all other provisions hereof, obtained the written consent of Holders of a majority of the outstanding principal amount of Transfer Restricted Securities (excluding any Transfer Restricted Securities held by the Company or its Affiliates). Notwithstanding the foregoing, a waiver or consent to departure from the provisions hereof that relates exclusively to the rights of Holders whose securities are being tendered pursuant to the Exchange Offer and that does not affect directly or indirectly the rights of other Holders whose securities are not being tendered pursuant to such Exchange Offer may be given by the Holders of a majority of the outstanding principal amount of Transfer Restricted Securities being tendered or registered; *provided, however*, that, with respect to any matter that directly or indirectly affects the rights of any Initial Purchaser hereunder, the Company shall obtain the written consent of each such Initial Purchaser with respect to which such amendment, qualification, supplement, waiver, consent or departure is to be effective.

(e) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail (registered or certified, return receipt requested), telex, telecopier, or air courier guaranteeing overnight delivery:

(i) if to a Holder, at the address set forth on the records of the Registrar under the Indenture, with a copy to the Registrar under the Indenture; and

(ii) if to the Company or the Guarantors:

(iii)

Prestige Brands, Inc.
90 North Broadway
Irvington, NY 10533
Telecopier No.: (914) 524-6821
Attention: Ronald Lombardi

With a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Telecopier No.: (212) 446-6460
Attention: Jason K. Zachary

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee at the address specified in the Indenture.

(f) *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including, without limitation, and without the need for an express assignment, subsequent Holders of Transfer Restricted Securities; *provided, however,* that this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and to the extent such successor or assign acquired Transfer Restricted Securities from such Holder.

(g) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(h) *Headings.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICTS OF LAW RULES THEREOF.

(j) *Severability.* In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(k) *Entire Agreement.* This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the registration rights granted by the Company with respect to the Transfer Restricted Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

PRESTIGE BRANDS, INC.

By: /s/ Eric S. Klee

Name: Eric S. Klee

Title: Secretary and General Counsel

GUARANTORS

BLACKSMITH BRANDS, INC.

MEDTECH HOLDINGS, INC.

MEDTECH PRODUCTS INC.

PRESTIGE BRANDS HOLDINGS, INC.

PRESTIGE BRANDS HOLDINGS, INC.

PRESTIGE BRANDS INTERNATIONAL, INC.

PRESTIGE PERSONAL CARE HOLDINGS, INC.

PRESTIGE PERSONAL CARE, INC.

PRESTIGE SERIVES CORP.

THE CUTEX COMPANY

THE DENOREX COMPANY

THE SPIC AND SPAN COMPANY

By: /s/ Eric S. Klee

Name: Eric S. Klee

Title: Secretary and General Counsel

The foregoing Registration Rights Agreement is hereby confirmed and accepted as of the date first above written:

MORGAN STANLEY & CO. LLC
CITGROUP GLOBAL MARKETS INC.
RBC CAPITAL MARKETS, LLC
DEUTSCHE BANK SECURITIES INC.
Acting on behalf of itself
and as the Representatives of
the several Initial Purchasers

By: Morgan Stanley & Co. LLC
By: /s/ Paul Fossati
Name: Paul Fossati
Title: Managing Director

\$660,000,000

TERM LOAN CREDIT AGREEMENT

Dated as of January 31, 2012

Among

PRESTIGE BRANDS HOLDINGS, INC.,
as Holdings,

PRESTIGE BRANDS, INC.,
as the Borrower,

THE GUARANTORS PARTY HERETO FROM TIME TO TIME

CITIBANK, N.A.,
as Administrative Agent,

and

THE OTHER LENDERS PARTY HERETO FROM TIME TO TIME

CITIGROUP GLOBAL MARKETS INC.,
MORGAN STANLEY SENIOR FUNDING, INC. and
RBC CAPITAL MARKETS
as Joint Lead Arrangers and Joint Bookrunners,

MORGAN STANLEY SENIOR FUNDING, INC.,
as Syndication Agent

and

RBC CAPITAL MARKETS¹,
as Documentation Agent

¹ RBC Capital Markets is a marketing name for the investment banking activities of the Royal Bank of Canada.

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TERM LOAN CREDIT AGREEMENT

This TERM LOAN CREDIT AGREEMENT is entered into as of January 31, 2012, among PRESTIGE BRANDS HOLDINGS, INC., a Delaware corporation (“**Holdings**”), PRESTIGE BRANDS, INC., a Delaware corporation (the “**Borrower**”), the other Guarantors party hereto from time to time, CITIBANK, N.A., as Administrative Agent, and each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”).

PRELIMINARY STATEMENTS

Pursuant to (i) the Business Sale and Purchase Agreement, dated as of December 20, 2011 (as amended, supplemented or modified from time to time, the “**Acquisition Agreement**”), by and among Holdings, on the one hand, and GlaxoSmithKline LLC, a company incorporated under the laws of the state of Delaware, and the other sellers identified therein (collectively, the “**Seller**”), a Subsidiary Guarantor to whom Holdings will, at or prior to the Closing Date, assign its rights and obligations under the Acquisition Agreement (the “**BSPA Assignment**”) will acquire (the “**Acquisition**”) the Acquired Business and (ii) the Business Sale and Purchase Agreement, dated as of December 20, 2011 (as amended, supplemented or modified from time to time, the “**Split Brands Acquisition Agreement**”), by and among Holdings, on the one hand, and the Seller, Holdings has agreed to acquire (the “**Split Brands Acquisition**”) the Split Brands prior the Split Brands Cutoff Date (as defined herein) .

The Borrower has requested that, substantially simultaneously with the consummation of the Acquisition, the Lenders extend credit to the Borrower in the form of Term B Loans (as this and other capitalized terms used in these preliminary statements are defined in Section 1.01 below) on the Closing Date in an initial aggregate principal amount of \$660,000,000.

The proceeds of the Term B Loans, together with the proceeds of the issuance of the Senior Notes will be used by the Borrower to pay the consideration in connection with the Acquisition and Transaction Expenses.

The applicable Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

“**ABL Agent**” means Citibank, N.A., in its capacity as administrative agent under the ABL Facility Documentation, or any successor administrative agent or collateral agent under the ABL Facility Documentation.

“**ABL Claimholders**” has the meaning assigned to such term in the ABL Intercreditor Agreement.

“**ABL Credit Agreement**” means that certain credit agreement dated as of the Closing Date, among Holdings, the Borrower, the Subsidiary Guarantors party thereto, the lenders party thereto and the ABL Agent, as the same may be amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case as and to the extent permitted by this Agreement and the ABL Intercreditor Agreement.

“**ABL Facility**” means that credit facility made available to the Borrower and certain of its Subsidiaries pursuant to the ABL Credit Agreement.

“**ABL Facility Documentation**” means the ABL Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith.

“**ABL Facility Indebtedness**” means (i) Indebtedness of Holdings, the Borrower or any Restricted Subsidiary outstanding under the ABL Facility Documentation, (ii) any Swap Contract permitted pursuant to Section VII hereof that is entered into by and between the Borrower or any Restricted Subsidiary and any Person that is a lender under the ABL Credit Agreement or an Affiliate of a lender under the ABL Credit Agreement at the time such Swap Contract is entered into and (iii) any agreement with respect to Cash Management Obligations permitted under Article VII that is entered into by and between the Borrower or any Restricted Subsidiary and any Person that is a lender under the ABL Credit Agreement or an Affiliate of a lender under the ABL Credit Agreement at the time such agreement is entered into.

“**ABL Intercreditor Agreement**” means the intercreditor agreement dated as of the Closing Date among the Administrative Agent, the ABL Agent and the Loan Parties, substantially in the form attached as Exhibit L hereto or any other intercreditor agreement among the ABL Agent, one or more Senior Representatives of Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt and the Administrative Agent on terms that are no less favorable in any material respect to the Secured Parties as those contained in the form attached as Exhibit L hereto.

“**ABL Priority Collateral**” has the meaning assigned to such term in the ABL Intercreditor Agreement.

“**Acceptable Discount**” has the meaning set forth in Section 2.05(a)(v)(D)(2).

“**Acceptable Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Acceptance and Prepayment Notice**” means a notice of the Borrower’s acceptance of

the Acceptable Discount in substantially the form of Exhibit E-3.

“**Acceptance Date**” has the meaning set forth in Section 2.05(a)(v)(D)(2).

“**Acquired Business**” means the Business (as defined in the Acquisition Agreement (as in effect on December 20, 2011)).

“**Acquired Business Annual Financial Statements**” means the audited statements of net assets to be sold of the Acquired Business as of December 31, 2010, 2009 and 2008 and related statements of revenues and direct operating expenses of the Acquired Business for the fiscal years then ended.

“**Acquired Business Unaudited Financial Statements**” means the unaudited statements of net assets to be sold and related statements of revenues and direct operating expenses of the Acquired Business for the nine month period ended September 30, 2011 and the prior comparative period.

“**Acquisition**” has the meaning specified in the preliminary statements to this Agreement.

“**Acquisition Agreement**” has the meaning specified in the preliminary statements to this Agreement.

“**Additional Lender**” has the meaning set forth in Section 2.14(c).

“**Additional Refinancing Lender**” means, at any time, any bank, financial institution or other institutional lender or investor (other than any such bank, financial institution or other institutional lender or investor that is a Lender at such time) that agrees to provide any portion of Refinancing Term Loans pursuant to a Refinancing Amendment in accordance with Section 2.15, *provided* that each Additional Refinancing Lender shall be subject to the approval of (i) the Administrative Agent, such approval not to be unreasonably withheld or delayed, to the extent that each such Additional Refinancing Lender is not then an existing Lender, an Affiliate of a then existing Lender or an Approved Fund and (ii) the Borrower.

“**Administrative Agent**” means Citi, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

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

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

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

direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Agent Parties**” has the meaning set forth in Section 10.02(b).

“**Agent-Related Persons**” means the Agents, together with their respective Affiliates, officers, directors, employees, partners, agents, advisors and other representatives.

“**Agents**” means, collectively, the Administrative Agent, the Syndication Agent, the Documentation Agent, the Arrangers and the Bookrunners.

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this Credit Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

“**All-In Yield**” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, a Eurocurrency Rate or Base Rate floor greater than 1.25% or 2.25%, respectively, or otherwise; *provided* that OID and upfront fees shall be equated to interest rate assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of its incurrence of the applicable Indebtedness); *provided, further*, that “All-In Yield” shall not include arrangement fees, structuring fees, commitment fees, underwriting fees or other fees not paid to all Lenders of such Indebtedness.

“**Applicable Discount**” has the meaning set forth in Section 2.05(a)(v)(C)(2).

“**Applicable ECF Percentage**” means, for any Excess Cash Flow Period, (a) 50% if the Consolidated First Lien Net Leverage Ratio as of the last day of such Excess Cash Flow Period is greater than 3.00:1.00, (b) 25% if the Consolidated First Lien Net Leverage Ratio as of the last day of such Excess Cash Flow Period is less than or equal to 3.00:1.00 and greater than 2.50:1.00 and (c) 0% if the Consolidated First Lien Net Leverage Ratio as of the last day of such Excess Cash Flow Period is less than or equal to 2.50:1.00.

“**Applicable Rate**” means a percentage per annum equal to (A) for Eurocurrency Rate Loans, 4.00% and (B) for Base Rate Loans, 3.00%.

“**Appropriate Lender**” means, at any time, with respect to Loans of any Class, the Lenders of such Class.

“**Approved Bank**” has the meaning set forth in clause (c) of the definition of “Cash Equivalents.”

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

“**Arrangers**” means Citigroup Global Markets Inc., Morgan Stanley Senior Funding, Inc. and RBC Capital Markets, each in its capacity as a joint lead arranger under this Agreement.

“**Assignees**” has the meaning set forth in Section 10.07(b).

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit E-1 hereto.

“**Assignment Taxes**” has the meaning set forth in Section 3.01(b).

“**Attorney Costs**” means and includes all reasonable and documented fees, expenses and disbursements of any law firm or other external legal counsel.

“**Attributable Indebtedness**” means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Auction Agent**” means (a) the Administrative Agent or (b) any other financial institution or advisor employed by the Borrower (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Discounted Term Loan Prepayment pursuant to Section 2.05(a)(v); *provided* that the Borrower shall not designate the Administrative Agent as the Auction Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); *provided, further*, that neither the Borrower nor any of its Affiliates may act as the Auction Agent.

“**Base Rate**” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Citi as its “prime rate” and (c) the Eurocurrency Rate plus 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day); *provided* that in no event shall the Base Rate with respect to Term Loans be less than 2.25% per annum. The “prime rate” is a rate set by Citi based upon various factors including Citi’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Citi shall take effect at the opening of business on the day specified in the public announcement of such change.

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

“**Bookrunner**” means each of Citigroup Global Markets Inc., Morgan Stanley Senior Funding, Inc. and RBC Capital Markets, each in its capacity as a joint bookrunner.

“**Borrower**” has the meaning specified in the introductory paragraph to this Agreement.

“**Borrower Materials**” has the meaning specified in Section 6.01.

“**Borrower Offer of Specified Discount Prepayment**” means the offer by any Company

Party to make a voluntary prepayment of Term Loans at a Specified Discount to par pursuant to Section 2.05(a)(v)(B).

“**Borrower Solicitation of Discount Range Prepayment Offers**” means the solicitation by any Company Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Term Loans at a specified range of discounts to par pursuant to Section 2.05(a)(v)(C).

“**Borrower Solicitation of Discounted Prepayment Offers**” means the solicitation by any Company Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Term Loans at a discount to par pursuant to Section 2.05(a)(v)(D).

“**Borrowing**” means a borrowing consisting of Term Loans of the same Type and currency and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01.

“**Borrowing Base**” means an amount equal to (i) 85% of the face amount of the accounts receivable plus (ii) the lesser of (x) 75% of the lower of cost or market value or (y) 85% of the net orderly liquidation value, in each case, of the inventory, in each case, of the Borrower and its Restricted Subsidiaries.

“**BSPA Assignment**” has the meaning specified in the preliminary statements to this Agreement.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York and, if such day relates to any Eurocurrency Rate Loan, means any such day that is also a London Banking Day.

“**Canadian Dollar**” means lawful money of Canada.

“**Capital Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases) by the Borrower and its Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries.

“**Capitalized Lease Obligation**” means, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

“**Capitalized Leases**” means all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“**Capitalized Software Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

“**Cash Collateral Account**” means a blocked account at Citi (or another commercial bank selected by the Administrative Agent) in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner satisfactory to the Administrative Agent.

“**Cash Equivalents**” means any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

(a) Dollars, pounds sterling, euros or Canadian Dollars;

(b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States or the United Kingdom having average maturities of not more than 24 months from the date of acquisition thereof; *provided* that the full faith and credit of the United States or the United Kingdom, as applicable, is pledged in support thereof;

(c) time deposits or eurodollar time deposits with, insured certificates of deposit, bankers’ acceptances or overnight bank deposits of, or letters of credit issued by, any commercial bank that (i) is a Lender or (ii) (A) is organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development or is the principal banking Subsidiary of a bank holding company organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development and is a member of the Federal Reserve System, and (B) has combined capital and surplus of at least \$250,000,000 (any such bank in the foregoing clauses (i) or (ii) being an “**Approved Bank**”), in each case with maturities not exceeding 24 months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation (other than structured investment vehicles and other than corporations used in structured financing transactions) rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than 24 months from the date of acquisition thereof;

(e) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower);

(f) repurchase obligations for underlying securities of the types described in clauses (b), (c) and (e) above entered into with any Approved Bank;

(g) securities with average maturities of 24 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(h) Investments (other than in structured investment vehicles and structured financing transactions) with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(i) securities with maturities of 12 months or less from the date of acquisition backed by standby letters of credit issued by any Approved Bank;

(j) instruments equivalent to those referred to in clauses (a) through (i) above denominated in euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction;

(k) Investments, classified in accordance with GAAP as Current Assets of the Borrower or any Restricted Subsidiary, in money market investment programs which are registered under the Investment Company Act of 1940 or which are administered by financial institutions having capital of at least \$250,000,000, and, in either case, the portfolios of which are limited such that substantially all of such Investments are of the character, quality and maturity described in clauses (a) through (i) of this definition; and

(l) investment funds investing at least 95% of their assets in securities of the types described in clauses (a) through (k) above.

"Cash Management Obligations" means obligations owed by the Borrower or any Restricted Subsidiary in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds.

"Casualty Event" means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

"CFC" means a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"Citi" means Citibank, N.A., a national banking association, acting in its individual

capacity, and its successors and assigns.

“**Change of Control**” shall be deemed to occur if:

(a) (i) any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date, but excluding any employee benefit plan of such person and its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), shall have, directly or indirectly, acquired beneficial ownership of Equity Interests representing 35% or more of the aggregate voting power represented by the issued and outstanding Equity Interests of Holdings or (ii) during each period of twelve consecutive months, individuals who, at the beginning of such period, constituted the board of directors (or similar governing body) of Holdings (together with any directors whose election by the board of directors of Holdings or whose nomination for election by the members of Holdings was approved by a vote of at least a majority of the directors (or members of a similar governing body) then still in office who either were directors at the beginning of such period or whose elections or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors (or members of a similar governing body) then in office;

(b) a “change of control” (or similar event) shall occur in any document pertaining to the ABL Facility, the Senior Notes or the Existing Notes or, in each case, any Permitted Refinancing thereof with an aggregate outstanding principal amount in excess of the Threshold Amount; or

(c) Holdings shall cease to own 100% of the Equity Interests of the Borrower.

“**Class**” (a) when used with respect to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Term B Commitments, Term Commitments, Other Term Loan Commitments or Refinancing Term Commitments of a given Refinancing Series and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing are Term B Loans, Incremental Term Loans, Other Term Loans, Refinancing Term Loans of a given Refinancing Series or Extended Term Loans of a given Term Loan Extension Series. Term B Commitments, Other Term Loan Commitments and Term Commitments (and in each case, the Loans made pursuant to such Commitments) that have different terms and conditions shall be construed to be in different Classes. Commitments (and, in each case, the Loans made pursuant to such Commitments) that have the same terms and conditions shall be construed to be in the same Class.

“**Closing Date**” means January 31, 2012.

“**Code**” means the U.S. Internal Revenue Code of 1986, and the United States Treasury Department regulations promulgated thereunder, as amended from time to time.

“**Collateral**” means the “Collateral” as defined in the Security Agreement and all the

“Collateral” or “Pledged Assets” or similar term as defined in any other Collateral Document and any other assets pledged pursuant to any Collateral Document.

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

- (a) the Administrative Agent shall have received each Collateral Document required to be delivered (i) on the Closing Date, pursuant to Section 4.01(a)(iv) and (ii) at such time as may be designated therein, pursuant to the Collateral Documents, Section 6.11 or 6.13, subject, in each case, to the limitations and exceptions of this Agreement, duly executed by each Loan Party thereto;
- (b) all Obligations shall have been unconditionally guaranteed by Holdings and each Restricted Subsidiary of the Borrower that is a wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) including those that are listed on Schedule I hereto (each, a “**Guarantor**”); *provided* that, in addition, notwithstanding anything to the contrary contained in this Agreement, any Subsidiary of the Borrower that is an obligor under the Senior Notes, the Existing Notes, any ABL Facility Indebtedness, any Junior Financing, Permitted Unsecured Refinancing Debt, Permitted First Priority Refinancing Debt, Permitted Junior Priority Refinancing Debt or any Permitted Refinancing of any thereof, shall be a Guarantor hereunder for so long as it is an obligor under such Indebtedness;
- (c) the Obligations and the Guaranty shall have been secured by a first-priority security interest (subject to Liens permitted by Section 7.01) in (i) all the Equity Interests of the Borrower and (ii) all Equity Interests of each Restricted Subsidiary that is a wholly owned Domestic Subsidiary (other than a Domestic Subsidiary described in the following clause (iii)(A) or that has no material assets other than Equity Interests (including any Indebtedness treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries (other than Material Foreign Subsidiaries) that are CFCs) that is directly owned by the Borrower or any Subsidiary Guarantor and (iii) 65% of the issued and outstanding Equity Interests of (A) each Restricted Subsidiary that is a wholly owned Domestic Subsidiary that is directly owned by the Borrower or by any Subsidiary Guarantor and that has no material assets other than Equity Interests (including any Indebtedness treated as equity for U.S. federal income tax purposes) of one or more Material Foreign Subsidiaries that are CFCs and (B) each Restricted Subsidiary that is a wholly owned Material Foreign Subsidiary that is directly owned by the Borrower or by any Subsidiary Guarantor;
- (d) except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest (to the extent such security interest may be perfected by delivering certificated securities or instruments, filing financing statements under the Uniform Commercial Code or making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office, or the entry into any control agreement required under the Security Agreement, or to the extent required in the Security Agreement (or any other Collateral Document) or by Mortgages referred to in clause (e) below) in substantially all tangible and intangible assets of the Borrower and each Guarantor (including, but not limited to,

accounts (other than any Securitization Assets), inventory, equipment, investment property, contract rights, applications and registrations of IP Rights filed in the United States, other general intangibles, Material Real Property and proceeds of the foregoing), in each case, with the priority required by the Collateral Documents, in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents; and

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property required to be delivered pursuant to Section 6.11 and Section 6.13 (the “**Mortgaged Properties**”) duly executed and delivered by the applicable Loan Party, (ii) a title insurance policy for each Mortgaged Property available in each applicable jurisdiction (the “**Mortgage Policies**”) insuring the Lien of each such Mortgage as a valid first priority Lien on the property described therein, free of any other Liens except as expressly permitted by Section 7.01, together with such endorsements, coinsurance and reinsurance and in such amounts as the Administrative Agent may reasonably request, (iii) a completed Life-of-Loan Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each Loan Party relating thereto) and if any improvements on any Mortgaged Property are located within an area designated a “flood hazard area,” evidence of such flood insurance as may be required under Section 6.07, (iv) ALTA surveys in form and substance reasonably acceptable to the Administrative Agent or such existing surveys together with no-change affidavits sufficient for the title company to remove all standard survey exceptions from the Mortgage Policies and issue the endorsements required in (ii) above, (v) copies of any existing abstracts and appraisals and (vi) such legal opinions and other documents as the Administrative Agent may reasonably request with respect to any such Mortgaged Property;

provided, however, that the foregoing definition shall not require and the Loan Documents shall not contain any requirements as to the creation or perfection of pledges of, security interests in, Mortgages on, or the obtaining of title insurance, surveys, abstracts or appraisals or taking other actions with respect to any Excluded Assets.

The Administrative Agent may grant extensions of time for the perfection of security interests in, or the delivery of the Mortgages and the obtaining of title insurance and surveys with respect to, particular assets and the delivery of assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

No actions in any non-U.S. jurisdiction or required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located, titled, registered or filed outside of the U.S. or to perfect such security interests (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction).

“**Collateral Documents**” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages, Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 4.01(a)(iv), Section 6.11 or Section 6.13, the Intercreditor Agreements and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“**Commitment**” means an Incremental Term Commitment, Term B Commitment, Term Commitment, Other Term Loan Commitment, Refinancing Term Commitment of a given Refinancing Series or Extended Term Loan of a given Term Loan Extension Series, as the context may require.

“**Committed Loan Notice**” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A hereto.

“**Company Annual Financial Statements**” means the audited consolidated balance sheets of Holdings as of March 31, 2011, 2010 and 2009, and the related consolidated statements of income, changes in equity and cash flows for Holdings for the fiscal years then ended.

“**Company Parties**” means the collective reference to Holdings and its Subsidiaries, including the Borrower, and “Company Party” means any one of them.

“**Company Quarterly Financial Statements**” means the unaudited consolidated balance sheets and related consolidated statements of income, changes in equity and cash flows of Holdings for the most recent fiscal quarters (other than the fourth fiscal quarter of Holdings’ fiscal year) after the date of the balance sheet contained in the Company Annual Financial Statements and ended at least forty-five (45) days prior to the Closing Date.

“**Compensation Period**” has the meaning set forth in Section 2.12(c)(ii).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit D-1 hereto.

“**Confidential Disclosure Letter**” means the letter from the Borrower to the Lenders delivered on or prior to the date hereof.

“**Consolidated Cash Interest Coverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated EBITDA for such Test Period to (b) Consolidated Interest Expense for such Test Period.

“**Consolidated EBITDA**” means, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and, except with respect to clauses (viii) and (x) below, to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income, the sum of the following amounts for such period with respect

to the Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities (whether amortized or immediately expensed),

(ii) provision for taxes based on income, profits or capital gains of the Borrower and the Restricted Subsidiaries, including, without limitation, federal, state, franchise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations,

(iii) depreciation and amortization (including amortization of intangible assets, including Capitalized Software Expenditures),

(iv) (A) duplicative running costs, relocation costs or expenses, integration costs, transition costs, pre-opening, opening and consolidation costs for facilities, signing, retention and completion bonuses, costs incurred in connection with any strategic initiatives, costs incurred in connection with acquisitions and non-recurring product and intellectual property development, other business optimization expenses (including costs and expenses relating to business optimization programs and new systems design, retention charges, systems establishment costs and implementation costs), project start-up costs, severance and other restructuring charges representing cash items (including restructuring costs related to acquisitions and to closure of facilities, and excess pension charges); *provided* that the aggregate amount of all items added back pursuant to this clause (iv)(A) for any Test Period shall not exceed 15% of Consolidated EBITDA for such Test Period,

(B) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments, in each case in connection with acquisitions and

(C) Transaction Expenses,

(v) the amount of any expense or reduction of Consolidated Net Income consisting of Restricted Subsidiary income attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary,

(vi) [Reserved],

(vii) any Equity Funded Employee Plan Costs,

(viii) (i) cost savings, operating expense reductions and synergies related to the Transactions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken (in the good faith determination of the Borrower) within 18 months after the Closing Date (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period) and (ii) cost savings, operating expense reductions and synergies related to mergers and other business combinations, acquisitions, divestitures, restructurings, cost savings initiatives and other similar initiatives and actions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken (in the good faith determination of the Borrower) (A) within 18 months after a merger or other business combination, acquisition or divestiture is consummated or (B) within 12 months in the case of any other restructuring, cost savings initiative or other initiative or action (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that no cost savings, operating expense reductions and synergies shall be added pursuant to this clause (viii) to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, for such period,

(ix) any net loss from discontinued operations,

(x) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) below for any previous period and not added back,

(xi) non-cash expenses, charges and losses (including reserves, impairment charges or asset write-offs, losses from investments recorded using the equity method, stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable in the normal course or inventory; *provided* that if any non-cash charges referred to in this clause (xi) represents an accrual or reserve for potential cash items in any future period, (1) the Borrower may elect not to add back such non-cash charge in the current period and (2) to the extent the Borrower elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to such extent paid,

(xii) the amount of loss on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Financing, less

(b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period), (ii) any net gain from discontinued operations and (iii) the amount of any minority interest income consisting of Restricted Subsidiary losses attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary; *provided* that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a)(xi)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received);

provided that:

(A) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA (x) currency translation gains and losses related to currency remeasurements of Indebtedness (including the net loss or gain (i) resulting from Swap Contracts for currency exchange risk and (ii) resulting from intercompany indebtedness) and (y) all other foreign currency translation gains or losses to the extent such gains or losses are non-cash items,

(B) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any adjustments resulting from the application of FASB Accounting Standards Codification 815 and International Accounting Standard No. 39 and their respective related pronouncements and interpretations,

(C) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any income (loss) for such period attributable to the early extinguishment of (i) Indebtedness, (ii) obligations under any Swap Contracts or (iii) other derivative instruments.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement for any period that includes any of the fiscal quarters ended March 31, 2011, June 30, 2011 and September 30, 2011, Consolidated EBITDA for such fiscal quarters shall be \$50,883,000, \$57,045,000 and \$59,031,000, respectively, in each case, as may be subject to addbacks and adjustments (without duplication) pursuant to clauses (iv) (A) and (viii) above and Section 1.09(c) for the applicable Test Period. For the avoidance of doubt, Consolidated EBITDA shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

“Consolidated First Lien Net Debt” means, as of any date of determination, any

Indebtedness described in clause (a) of the definition of “Consolidated Total Net Debt” outstanding on such date that is secured by a Lien on any asset or property of the Borrower or any Restricted Subsidiary but excluding any such Indebtedness (other than obligations under the ABL Facility) in which the applicable Liens are expressly subordinated or junior to the Liens securing the Obligations minus the lesser of (x) the aggregate amount of cash and Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(a), Section 7.01(p), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(cc) (only to the extent the Obligations are secured by such cash and Cash Equivalents) and Section 7.01(dd) (only to the extent the Obligations are secured by such cash and Cash Equivalents)) and (y) \$75,000,000; *provided* that Consolidated First Lien Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated First Lien Net Debt until 3 Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated First Lien Net Debt.

“**Consolidated First Lien Net Leverage Ratio**” means, with respect to any Test Period or any other period of four consecutive fiscal quarters specified in this Agreement, the ratio of (a) Consolidated First Lien Net Debt as of the last day of such Test Period or four consecutive fiscal quarter period to (b) Consolidated EBITDA for such Test Period or four consecutive fiscal quarter period.

“**Consolidated Interest Expense**” means, for any period, the sum, without duplication, of

(i) the cash interest expense (including that attributable to Capitalized Leases), net of cash interest income, of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs under Swap Contracts, and

(ii) any cash payments made during such period in respect of obligations referred to in clause (b) below relating to Funded Debt that were amortized or accrued in a previous period;

provided that there shall be excluded from Consolidated Interest Expense for any period:

(a) deferred financing costs, debt issuance costs, commissions, fees (including amendment and contract fees) and expenses and, in each case, the amortization thereof, and any other amounts of non-cash interest,

(b) the accretion or accrual of discounted liabilities and any prepayment premium or penalty during such period,

- (c) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Contracts or other derivative instruments pursuant to FASB Accounting Standards Codification 815,
- (d) any cash costs associated with breakage in respect of hedging agreements for interest rates,
- (e) all non-recurring cash interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP,
- (f) fees and expenses associated with the consummation of the Transactions,
- (g) annual agency fees paid to (x) the Administrative Agent and (y) the ABL Agent,
- (h) costs associated with obtaining Swap Contracts,
- (i) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or, if applicable, purchase accounting in connection with the Transactions or any acquisition,
- (j) the cash interest expense (or income) of all Unrestricted Subsidiaries for such period to the extent otherwise included in Consolidated Interest Expense, and
- (k) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Financing.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Interest Expense (i) for any period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense shall be an amount equal to actual Consolidated Interest Expense from the Closing Date through the date of determination multiplied by a fraction the numerator of which is 365 and the denominator of which is the number of days from the Closing Date through the date of determination and (ii) shall exclude the purchase accounting effects described in the last sentence of the definition of Consolidated Net Income.

“**Consolidated Net Income**” means, for any period, the net income (loss) of the Borrower and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided, however*, that, without duplication,

- (a) any after-tax effect of extraordinary, non-recurring or unusual items (including gains or losses and all fees and expenses relating thereto) for such period shall be excluded,
- (b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income shall be excluded,

(c) any fees and expenses incurred during such period (including, without limitation, any premiums, make-whole or penalty payments), or any amortization thereof for such period, in connection with any acquisition, investment, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument (in each case, including any such transaction consummated on or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt the effects of expensing all transaction related expenses in accordance with FASB Accounting Standards Codification 805 and gains or losses associated with FASB Accounting Standards Codification 460) shall be excluded,

(d) accruals and reserves that are established or adjusted within twelve months after the Closing Date that are so required to be established as a result of the Transactions (or within twelve months after the closing of any acquisition that are so required to be established as a result of such acquisition) in accordance with GAAP or changes as a result of adoption or modification of accounting policies in accordance with GAAP shall be excluded,

(e) any net after-tax effect of gains or losses on disposed, abandoned or discontinued operations shall be excluded,

(f) any net after-tax effect of gains or losses (less all fees, expenses and charges relating thereto) attributable to asset dispositions or abandonments or the sale or other disposition of any Equity Interests of any Person in each case other than in the ordinary course of business, as determined in good faith by the Borrower, shall be excluded,

(g) the net income (loss) for such period of any Person that is not a Subsidiary of the Borrower, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income of the Borrower shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent subsequently converted into cash or Cash Equivalents) to the Borrower or a Restricted Subsidiary thereof in respect of such period,

(h) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(i) any non-cash compensation charge or expense, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs or any other equity-based compensation shall be excluded, and any cash charges associated with the rollover, acceleration or payout of Equity Interests by management of the Borrower or any of its

direct or indirect parents in connection with the Transactions, shall be excluded,

(j) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 day period), shall be excluded,

(k) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses with respect to liability or casualty events or business interruption shall be excluded,

(l) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of Statement on Financial Accounting Standards Nos. 87, 106 and 112, and any other items of a similar nature, shall be excluded,

(m) the income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary of Borrower or is merged into or consolidated with Borrower or any of its Subsidiaries or that Person's assets are acquired by Borrower or any of its Restricted Subsidiaries shall be excluded (except to the extent required for any calculation of Consolidated EBITDA on a Pro Forma Basis in accordance with Section 1.09),

(n) solely for the purpose of determining the Cumulative Credit pursuant to clause (a) of the definition thereof, the income of any Restricted Subsidiary of Borrower that is not a Guarantor to the extent that the declaration or payment of dividends or similar distributions by that Restricted 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 Restricted Subsidiary (which has not been waived) shall be excluded, except (solely to the extent permitted to be paid) to the extent of the amount of dividends or other distributions actually paid to Borrower or any of its Restricted Subsidiaries that are Guarantors by such Person during such period in accordance with such documents and regulations.

There shall be excluded from Consolidated Net Income for any period the purchase accounting effects of adjustments in component amounts required or permitted by GAAP (including in the inventory, property and equipment, software, goodwill, intangible assets, in-process research and

development, deferred revenue and debt line items thereof) and related authoritative pronouncements (including the effects of such adjustments pushed down to the Borrower and the Restricted Subsidiaries), as a result of the Transactions, any acquisition constituting an Investment permitted under this Agreement consummated prior to or after the Closing Date, or the amortization or write-off of any amounts thereof. For the avoidance of doubt, Consolidated Net Income shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

“Consolidated Secured Net Debt” means, as of any date of determination, any Indebtedness described in clause (a) of the definition of “Consolidated Total Net Debt” outstanding on such date that is secured by a Lien on any asset or property of the Borrower or any Restricted Subsidiary minus the lesser of (x) the aggregate amount of cash and Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(a), Section 7.01(p) and Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(cc) (only to the extent the Obligations are secured by such cash and Cash Equivalents) and Section 7.01(dd) (only to the extent the Obligations are secured by such cash and Cash Equivalents)) and (y) \$75,000,000; *provided* that Consolidated Secured Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Secured Net Debt until 3 Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Secured Net Debt.

“Consolidated Total Net Debt” means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with the Transactions or any acquisition constituting an Investment permitted under this Agreement) consisting of Indebtedness for borrowed money, Attributable Indebtedness, and debt obligations evidenced by promissory notes or similar instruments, minus (b) the lesser of (x) the aggregate amount of cash and Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(a), Section 7.01(p), Section 7.01(q) and clauses (i) and (ii) of Section 7.01(r), Section 7.01(cc) (only to the extent the Obligations are secured by such cash and Cash Equivalents) and Section 7.01(dd) (only to the extent the Obligations are secured by such cash and Cash Equivalents)) and (y) \$75,000,000; *provided* that Consolidated Total Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Net Debt until 3 Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Total Net Debt.

“**Consolidated Working Capital**” means, with respect to the Borrower and its Restricted Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; *provided* that increases or decreases in Consolidated Working Capital shall be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent or (b) the effects of purchase accounting.

“**Contract Consideration**” has the meaning set forth in the definition of “Excess Cash Flow.”

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

“**Control**” has the meaning specified in the definition of “Affiliate.”

“**Credit Agreement Refinancing Indebtedness**” means (a) Permitted First Priority Refinancing Debt, (b) Permitted Junior Priority Refinancing Debt or (c) Permitted Unsecured Refinancing Debt, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or part, existing Term Loans, or any then-existing Credit Agreement Refinancing Indebtedness (“**Refinanced Debt**”); *provided* that (i) such Indebtedness has a maturity no earlier, and a Weighted Average Life to Maturity equal to or greater, than the Refinanced Debt, (ii) such Indebtedness shall not have a greater principal amount than the principal amount of the Refinanced Debt plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees and expenses associated with the refinancing, (iii) the terms and conditions of such Indebtedness (except as otherwise provided in clause (ii) above and with respect to pricing, premiums and optional prepayment or redemption terms) reflect market terms at time of incurrence, and if such Indebtedness contains financial maintenance covenants, such covenants are not tighter (from the perspective of Holdings, Borrower and its Restricted Subsidiaries), or in addition to, those contained herein (*provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (iii) shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination (including a description of the basis upon which it disagrees)), and (iv) such Refinanced Debt shall be repaid, repurchased, retired, defeased or satisfied and discharged, and all accrued interest, fees, premiums (if any) and penalties in connection therewith shall be paid, on the date such Credit Agreement Refinancing Indebtedness is issued, incurred or obtained.

“**Credit Extension**” means the making of a Loan.

“**Cumulative Credit**” means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) the Cumulative Retained Excess Cash Flow Amount at such time, plus

(b) the cumulative amount of cash and Cash Equivalent proceeds from (i) the sale of Qualified Equity Interests of Holdings or Equity Interests of any direct or indirect parent of Holdings after the Closing Date and on or prior to such time (including upon exercise of warrants or options) (other than Excluded Contributions or any amount designated as a Cure Amount or used for Equity Funded Employee Plan Costs or proceeds used pursuant to clause (A) of Section 7.06(f)) which proceeds have been contributed as common equity to the capital of the Borrower and (ii) the Qualified Equity Interests of Holdings (or Equity Interests of any direct or indirect parent of Holdings) (other than Excluded Contributions or any amount designated as a Cure Amount or used for Equity Funded Employee Plan Costs) issued upon conversion of Indebtedness (other than Indebtedness that is contractually subordinated to the Obligations) of the Borrower or any Restricted Subsidiary of the Borrower owed to a Person other than a Loan Party or a Restricted Subsidiary of a Loan Party not previously applied for a purpose (including a Cure Amount) other than use in the Cumulative Credit, plus

(c) 100% of the aggregate amount of contributions to the common capital of the Borrower received in cash and Cash Equivalents after the Closing Date (other than Excluded Contributions or any amount designated as a Cure Amount or used for Equity Funded Employee Plan Costs), plus

(d) 100% of the aggregate amount received by the Borrower or any Restricted Subsidiary of the Borrower in cash and Cash Equivalents from:

(A) the sale (other than to Holdings, the Borrower or any such Restricted Subsidiary) of the Equity Interests of an Unrestricted Subsidiary or any minority Investments, or

(B) any dividend or other distribution by an Unrestricted Subsidiary or received in respect of minority Investments, or

(C) any interest, returns of principal, repayments and similar payments by such Unrestricted Subsidiary or received in respect of any minority Investments;

provided that in the case of clauses (A), (B), and (C), in each case, to the extent that the Investment corresponding to the designation of such Subsidiary as an Unrestricted Subsidiary or any subsequent Investment in such Unrestricted Subsidiary or minority Investment, as applicable, was made in reliance on the Cumulative Credit pursuant to Section 7.02(c)(iii)(B)(y), 7.02(i)(iv)(2) or 7.02(n)(y), plus

(e) in the event any Unrestricted Subsidiary has been re-designated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary, the fair market value of the Investments of the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such redesignation,

combination or transfer (or of the assets transferred or conveyed, as applicable) so long as such Investments were originally made pursuant to Sections 7.02(c)(iii)(B)(y), 7.02(i)(iv)(2) or 7.02(n)(y), plus

(f) an amount equal to any returns in cash and Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Restricted Subsidiary in respect of any Investments made pursuant to Section 7.02(c)(iii)(B)(y), 7.02(i)(iv)(2) or 7.02(n)(y), minus

(g) any amount of the Cumulative Credit used to make Investments pursuant to Sections 7.02(c)(iii)(B)(y), 7.02(i)(iv)(2) or 7.02(n)(y) after the Closing Date and prior to such time, minus

(h) any amount of the Cumulative Credit used to pay dividends or make distributions pursuant to Section 7.06(f)(A) or 7.06(g) after the Closing Date and prior to such time, minus

(i) any amount of the Cumulative Credit used to make payments or distributions in respect of Junior Financings pursuant to Section 7.13 after the Closing Date and prior to such time.

“**Cumulative Retained Excess Cash Flow Amount**” means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to the aggregate cumulative sum of the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Closing Date and prior to such date.

“**Cure Amount**” has the meaning set forth in Section 8.04(a).

“**Cure Expiration Date**” has the meaning set forth in Section 8.04(a).

“**Current Assets**” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all assets (other than cash and Cash Equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current assets at such date of determination, other than amounts related to current or deferred Taxes based on income or profits (but excluding assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments).

“**Current Liabilities**” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current liabilities at such date of determination, other than (a) the current portion of any Indebtedness, (b) accruals of Consolidated Interest Expense (excluding Consolidated Interest Expense that is past due and unpaid), (c) accruals for current or deferred Taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves, (e) deferred revenue and (f) revolving loans, swing line loans and letter of credit

obligations under the ABL Facility or any other revolving credit facility.

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

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

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2.0% per annum; *provided* that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

“Discount Prepayment Accepting Lender” has the meaning set forth in Section 2.05(a)(v)(B)(2).

“Discount Range” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“Discount Range Prepayment Amount” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“Discount Range Prepayment Notice” means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.05(a)(v)(C) substantially in the form of Exhibit E-4.

“Discount Range Prepayment Offer” means the irrevocable written offer by a Lender, substantially in the form of Exhibit E-5, submitted in response to an invitation to submit offers following the Auction Agent’s receipt of a Discount Range Prepayment Notice.

“Discount Range Prepayment Response Date” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“Discount Range Proration” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“Discounted Prepayment Determination Date” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“Discounted Prepayment Effective Date” means in the case of a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with

Section 2.05(a)(v)(B)(1), Section 2.05(a)(v)(C)(1) or Section 2.05(a)(v)(D)(1), respectively, unless a shorter period is agreed to between the Borrower and the Auction Agent.

“**Discounted Term Loan Prepayment**” has the meaning set forth in Section 2.05(a)(v)(A).

“**Disposition**” or “**Dispose**” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Disqualified Equity Interests**” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and other than as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Latest Maturity Date at the time of issuance of such Equity Interests; *provided* that if such Equity Interests are issued pursuant to a plan for the benefit of employees of Holdings (or any direct or indirect parent thereof), the Borrower or the Restricted Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by the Borrower or if its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“**Documentation Agent**” means RBC Capital Markets, in its capacity as documentation agent under this Agreement.

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

“**Domestic Subsidiary**” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**Effective Yield**” means, as to any Loans of any Class, the effective yield on such Loans, taking into account the applicable interest rate margins, any interest rate floors or similar devices and all fees, including upfront or similar fees or original issue discount (amortized over the shorter of (x) the original stated life of such Loans and (y) the four years following the date of incurrence thereof) payable generally to Lenders making such Loans, but excluding any

arrangement, structuring or other fees payable in connection therewith that are not generally shared ratably with all relevant Lenders and consent fees paid generally to consenting Lenders.

“**Eligible Assignee**” has the meaning set forth in Section 10.07(a)(i).

“**Environment**” means indoor air, ambient air, surface water, groundwater, drinking water, land surface, subsurface strata, and natural resources such as wetlands, flora and fauna.

“**Environmental Laws**” means any applicable Law relating to the prevention of pollution or the protection of the Environment and natural resources, and the protection of human health and safety as it relates to the Environment, including any applicable provisions of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, and the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*, and all analogous state or local statutes, and the regulations promulgated pursuant thereto.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of investigation and remediation, fines, penalties or indemnities), of the Loan Parties or any Restricted Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

“**Equity Funded Employee Plan Costs**” means cash costs or expenses, incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent funded with cash proceeds contributed to the capital of the Borrower or net cash proceeds of an issuance of Qualified Equity Interests of the Borrower or Equity Interests of any direct or indirect parent of the Borrower (other than amounts designated as Excluded Contributions, any amount designated as a Cure Amount or any amount used in the Cumulative Credit).

“**Equity Interests**” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

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

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that is under common control with a Loan Party or any Restricted Subsidiary within the meaning of Section 414(b) or (c) of the Code or Section 4001 of ERISA (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA) or insolvent (within the meaning of Section 4245 of ERISA) or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (e) the filing of a notice of intent to terminate, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for, and that could reasonably be expected to result in, the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) with respect to a Pension Plan, the failure to satisfy the minimum funding standard of Section 412 of the Code, whether or not waived, (h) a failure by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate to make a required contribution to a Multiemployer Plan; (i) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to a Loan Party or any Restricted Subsidiary; or (j) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due under Section 4007 of ERISA, upon a Loan Party, any Restricted Subsidiary or any ERISA Affiliate.

“**Eurocurrency Rate**” means:

(a) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to (i) the British Bankers Association LIBOR Rate (“**BBA LIBOR**”), as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such published rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted by Citi and with a term equivalent to such Interest Period would be offered by Citi’s London Branch to major banks in the London interbank Eurodollar market at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by Citi's London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination;

provided that in all cases (a) or (b), the Eurocurrency Rate shall not be less than 1.25% per annum.

“**Eurocurrency Rate Loan**” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate.”

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

“**Excess Cash Flow**” means, for any period, an amount equal to:

(a) the sum, without duplication, of

(i) Consolidated Net Income for such period,

(ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) to the extent deducted in arriving at such Consolidated Net Income,

(iii) decreases in Consolidated Working Capital and long-term accounts receivable (outside of the ordinary course of business) for such period (other than any such decreases arising from acquisitions or dispositions (outside of the ordinary course of business) by the Borrower and its Restricted Subsidiaries completed during such period),

(iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than sales in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income,

(v) expenses deducted from Consolidated Net Income during such period in respect of expenditures made during any prior period for which a deduction from Excess Cash Flow was made in such period pursuant to clause (b)(xi), (xii) or (xiii) below,

(vi) cash income or gain (actually received in cash) excluded from the calculation of Consolidated Net Income for such period pursuant to the

definition thereof, and

(vii) cash receipts in respect of Swap Contracts during such period to the extent not already reflected in Consolidated Net Income for such period, minus

(b) the sum, without duplication, of

(i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income, and cash charges included in clauses (a) through (m) of the definition of Consolidated Net Income,

(ii) without duplication of amounts deducted pursuant to clause (xi) below in prior periods, the amount of Capital Expenditures or acquisitions of intellectual property to the extent not expensed and Capitalized Software Expenditures accrued or made in cash or accrued during such period, to the extent that such Capital Expenditures or acquisitions were financed with Internally Generated Cash and were not made by utilizing the Cumulative Retained Excess Cash Flow Amount,

(iii) the aggregate amount of all principal payments of Indebtedness of the Borrower or its Restricted Subsidiaries to the extent financed with Internally Generated Cash) (including (A) the principal component of payments in respect of Capitalized Leases and (B) the amount of any scheduled repayment of Term Loans pursuant to Section 2.07 and any mandatory prepayment of Term Loans pursuant to Section 2.05(b)(ii) to the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase, but excluding (W) all other prepayments of Term Loans (other than prepayments referred to in clause (B) above) during such period, (X) all prepayments of ABL Facility Indebtedness, (Y) all prepayments in respect of any other revolving credit facility, except to the extent there is an equivalent permanent reduction in commitments thereunder and (Z) payments of any Junior Financing made during such period except to the extent permitted to be paid pursuant to Section 7.13(a),

(iv) an amount equal to the aggregate net non-cash gain on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

(v) increases in Consolidated Working Capital and long-term accounts receivable for such period (other than any such increases arising from acquisitions or dispositions by the Borrower and its Restricted Subsidiaries during such period),

(vi) cash payments by the Borrower and its Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and its

Restricted Subsidiaries other than Indebtedness to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income and to the extent financed with Internally Generated Cash,

(vii) without duplication of amounts deducted pursuant to clause (xi) below in prior fiscal years, the amount of Investments and acquisitions made in cash during such period pursuant to Section 7.02 (other than Section 7.02(a), (c), (h), (l), (q), (r), (s) or (t)) to the extent that such Investments and acquisitions were financed with Internally Generated Cash and were not made by utilizing the Cumulative Retained Excess Cash Flow Amount,

(viii) the amount of Restricted Payments paid during such period pursuant to Section 7.06(f), (g)(x), (h) and (j) to the extent such Restricted Payments were financed with Internally Generated Cash,

(ix) to the extent not otherwise decreasing Consolidated Net Income in such Excess Cash Flow Period, the aggregate amount of expenditures actually made by the Borrower and its Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period,

(x) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and its Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness,

(xi) without duplication of amounts deducted from Excess Cash Flow in prior periods, the aggregate consideration required to be paid in cash by the Borrower and its Restricted Subsidiaries pursuant to binding contracts (the "**Contract Consideration**") entered into prior to or during such period relating to acquisitions constituting Investments permitted under this Agreement, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property to the extent expected to be consummated or made, plus any restructuring cash expenses, pension payments or tax contingency payments that have been added to Excess Cash Flow pursuant to clause (a)(ii) above that will be required to be made, in each case during the period of four consecutive fiscal quarters of the Borrower following the end of such period; *provided* that to the extent the aggregate amount of Internally Generated Cash not utilizing the Cumulative Retained Excess Cash Flow Amount actually utilized to finance such acquisitions, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property during such period of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters,

(xii) the amount of cash taxes paid in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(xiii) cash expenditures in respect of Swap Contracts during such period to the extent not deducted in arriving at such Consolidated Net Income, and

(xiv) any payment of cash to be amortized or expensed over a future period and recorded as a long-term asset (so long as any such amortization or expense in such future period is added back to Excess Cash Flow in such future period).

Notwithstanding anything in the definition of any term used in the definition of “Excess Cash Flow” to the contrary, all components of Excess Cash Flow shall be computed for the Borrower and its Restricted Subsidiaries on a consolidated basis.

“**Excess Cash Flow Period**” means each fiscal year of the Borrower commencing with and including the fiscal year ending March 31, 2013 but in all cases for purposes of calculating the Cumulative Retained Excess Cash Flow Amount shall only include such fiscal years for which financial statements and a Compliance Certificate have been delivered in accordance with Sections 6.01(a) and 6.02(a) and for which any prepayments required by Section 2.05(b)(i) (if any) have been made (it being understood that the Retained Percentage of Excess Cash Flow for any Excess Cash Flow Period shall be included in the Cumulative Retained Excess Cash Flow Amount regardless of whether a prepayment is required by Section 2.05(b)(i)).

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

“**Excluded Assets**” means (i) any fee owned real property (other than Material Real Properties) and any leasehold rights and interests in real property (including landlord waivers, estoppels and collateral access letters), (ii) motor vehicles and other assets subject to certificates of title, (iii) commercial tort claims, (iv) licenses, state or local franchises, charters and authorizations and any other property and assets to the extent that the Administrative Agent may not validly possess a security interest therein under applicable Laws (including, without limitation, rules and regulations of any Governmental Authority or agency) or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization, other than to the extent such prohibition or limitation is rendered ineffective under the UCC or other applicable Law notwithstanding such prohibition, (v) any particular asset or right under contract, if the pledge thereof or the security interest therein (A) is prohibited by applicable Law other than to the extent such prohibition is rendered ineffective under the UCC or other applicable Law notwithstanding such prohibition or (B) to the extent and for as long as it would violate the terms of any written agreement, license or lease with respect to such asset (in each case, after giving effect to the relevant provisions of the UCC or other applicable Laws) or would give rise to a termination right pursuant to any “change of control” or other similar provision under such written agreement, license or lease (except to the extent such provision is overridden by the UCC or other applicable Laws), in each case, (a) excluding any such written agreement that relates to Credit Agreement Refinancing Indebtedness or Permitted Ratio Debt and (b) only to the extent that such limitation on such pledge or security interest is otherwise permitted under Section 7.09, (vi) Margin Stock and Equity Interests in any Person other than wholly owned Restricted Subsidiaries (but excluding Excluded Pledged Subsidiaries and Subsidiaries that are not Material Subsidiaries), (vii) any permitted agreement, lease, license or property subject to a purchase money security interest or other similar arrangement to the extent

the pledges thereof and security interests therein are prohibited by such permitted agreement, lease, license or purchase money arrangement, other than proceeds and receivables thereof, except to the extent the pledge of such permitted agreement, lease, license or property is expressly deemed effective under the Uniform Commercial Code or other applicable Law or principle of equity notwithstanding such prohibition, (viii) the creation or perfection of pledges of, or security interests in, any property or assets that would result in material adverse tax consequences to Holdings, the Borrower or any of its Restricted Subsidiaries, as reasonably determined by the Borrower in consultation with the Administrative Agent, (ix) letter of credit rights, except to the extent constituting support obligations for other Collateral as to which perfection of the security interest in such other Collateral is accomplished solely by the filing of a UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC financing statement), (x) cash and Cash Equivalents (other than (A) proceeds of Collateral as to which perfection of the security interest in such proceeds is accomplished solely by the filing of a UCC financing statement and (B) as set forth in the second succeeding parenthetical phrase), deposit and other bank and securities accounts (including securities entitlements and related assets) (in each case, other than the Blocked Accounts (as defined in the Security Agreement) or other accounts subject to a control agreement in accordance with Section 3.03(g) of the Security Agreement and proceeds of Collateral held in such accounts) and any other assets requiring perfection through control agreements or by "control" (other than in respect of certificated Equity Interests in the Borrower and in wholly owned Restricted Subsidiaries that are Material Subsidiaries, which Equity Interests are otherwise required to be pledged), (xi) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal Law and (xii) particular assets if and for so long as, in the reasonable judgment of the Administrative Agent in consultation with the Borrower, the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance, surveys, abstracts or appraisals in respect of such assets exceed the practical benefits to be obtained by the Lenders therefrom; *provided, however*, that Excluded Assets shall not include any Proceeds, substitutions or replacements of any Excluded Assets referred to in clause (i) through (xii) (unless such Proceeds, substitutions or replacements would independently constitute Excluded Assets referred to in clauses (i) through (xii)). Notwithstanding the foregoing, in no event shall any asset securing any Indebtedness incurred pursuant to Section 7.03(r) or 7.03(s) be an Excluded Asset.

"Excluded Contribution" means the amount of capital contributions to the Borrower or net proceeds from the sale or issuance of Qualified Equity Interests of the Borrower (or issuances of debt securities that have been converted into or exchanged for any such Equity Interests) (other than any amount designated as a Cure Amount or used for Equity Funded Employee Plan Costs) and designated by the Borrower to the Administrative Agent as an Excluded Contribution on the date such capital contributions are made or such Equity Interests are sold or issued.

"Excluded Pledged Subsidiary" means (a) any Subsidiary for which the pledge of its Equity Interests is prohibited by applicable Law or by Contractual Obligations (excluding any Contractual Obligations that relates to Credit Agreement Refinancing Indebtedness or Permitted Ratio Debt) existing on the Closing Date (or, in the case of a newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) or for which

governmental (including regulatory) consent, approval, license or authorization would be required, (b) any other Subsidiary with respect to which, in the judgment of the Borrower and the Administrative Agent, the burden or cost or other consequences of the pledge of its Equity Interests shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (c) any not-for-profit Subsidiaries, (d) any special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary only to the extent that the pledge of its Equity Interests is prohibited by applicable Law or by Contractual Obligations in connection with a Qualified Securitization Financing and (e) any Subsidiary for which the pledge of its Equity Interests would result in any material adverse tax consequences for Holdings, the Borrower or any of its Restricted Subsidiaries, as reasonably determined by the Borrower, in consultation with the Administrative Agent. Notwithstanding the foregoing, in no event shall any Subsidiary that is an obligor under any Indebtedness incurred pursuant to Section 7.03(r) or 7.03(s) be an Excluded Pledged Subsidiary.

“Excluded Subsidiary” means (a) any Subsidiary that is not a wholly owned Subsidiary of the Borrower or a Guarantor, (b) any Subsidiary that is prohibited by applicable Law or by Contractual Obligations existing on the Closing Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from guaranteeing the Obligations or if guaranteeing the Obligation would require governmental (including regulatory) consent, approval, license or authorization, (c) any other Subsidiary with respect to which, in the judgment of the Borrower and the Administrative Agent, the burden or cost or other consequences of providing a Guarantee of the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (d) any Foreign Subsidiary, (e) any non-for-profit Subsidiaries, (f) any Unrestricted Subsidiaries, (g) any special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary, (h) any Subsidiaries that are captive insurance companies, (i) any direct or indirect Domestic Subsidiary that has no material assets other than Equity Interests (including any Indebtedness treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries that are CFCs, (j) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC and (k) any Subsidiary with respect to which the provision of a Guarantee of the Obligations would result in any material adverse tax consequences for Holdings, the Borrower or any of its Restricted Subsidiaries, as reasonably determined by the Borrower, in consultation with the Administrative Agent. Notwithstanding the foregoing, in no event shall any Subsidiary that is an obligor under any Indebtedness incurred pursuant to Section 7.03(r) or 7.03(s) be an Excluded Subsidiary.

“Existing Notes” means the \$250,000,000 in aggregate principal amount of the 8.25% senior notes due 2018 issued pursuant to the Existing Notes Indenture and outstanding on the Closing Date.

“Existing Notes Indenture” means the Indenture for the Existing Notes, dated as of March 24, 2010, between the Borrower and U.S. Bank National Association, as trustee, as in effect on the Closing Date and as amended, modified, supplemented, replaced or refinanced to the extent not prohibited by this Agreement.

“Existing Term Loan Tranche” has the meaning provided in Section 2.16(a).

“Extended Term Loans” has the meaning provided in Section 2.16(a).

“**Extending Term Lender**” has the meaning provided in Section 2.16(c).

“**Extension**” means the establishment of a Term Loan Extension Series by amending a Loan pursuant to Section 2.16 and the applicable Extension Amendment.

“**Extension Amendment**” has the meaning provided in Section 2.16(d).

“**Extension Election**” has the meaning provided in Section 2.16(c).

“**Facility**” means the Term B Loans, a given Refinancing Series of Refinancing Term Loans, a given Term Loan Extension Series of Extended Term Loans, a given Class of Incremental Term Loans or any Other Term Loan (or Commitment), as the context may require.

“**FATCA**” means current Sections 1471 through 1474 of the Code and any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with, and any current or future Treasury Regulations or other administrative guidance promulgated thereunder.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“**Fee Letter**” means the Fee Letter, dated as of December 20, 2011, among Holdings and the Arrangers.

“**FIRREA**” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“**First Lien Intercreditor Agreement**” means an intercreditor agreement substantially in the form of Exhibit K hereto (which agreement in such form or with immaterial changes thereto the Administrative Agent is authorized to enter into) together with any material changes thereto in light of prevailing market conditions, which material changes shall be posted to the Lenders not less than five (5) Business Days before execution thereof and, if the Required Lenders shall not have objected to such changes within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement (with such changes) is reasonable and to have consented to such intercreditor agreement (with such changes) and to the Administrative Agent’s execution thereof.

“**Flood Insurance Laws**” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster

Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

“Foreign Disposition” has the meaning set forth in Section 2.05(b)(vii).

“Foreign IP Subsidiary” means one or more wholly owned Subsidiaries of any Loan Party (a) that is incorporated in Ireland, Switzerland or other jurisdictions reasonably acceptable to the Administrative Agent, (b) whose Equity Interests shall be pledged to the Administrative Agent to the extent required pursuant to Section 6.11 and (c)(i) whose Organization Documents do not prevent or otherwise limit, and whose jurisdiction of organization and applicable Law do not prevent or otherwise limit, the granting of Liens to the Administrative Agent on 65% of the Equity Interests of such wholly owned Subsidiaries, foreclosure under such Liens or any other exercise of remedies similar to the remedies set forth in the Collateral Documents in respect of capital stock and (ii) whose Organization Documents do not prevent or otherwise limit (except to the extent required by applicable Law), any payment by any wholly owned Subsidiary to any Loan Party (whether directly or indirectly through any wholly owned Subsidiary).

“Foreign IP Transfer” means the transfer to one or more Foreign IP Subsidiaries of (a) any intellectual property to the extent registered in any jurisdiction other than the United States or any State thereof or the District of Columbia or (b) any unregistered intellectual property and all rights under manufacturing, distribution and other contracts, in each case to the extent such intellectual property and rights are used in or otherwise related to the development, marketing, manufacturing, packaging, handling, distribution or sale of products sold only outside of the United States.

“Foreign Subsidiary” means any direct or indirect Restricted Subsidiary of the Borrower which is not a Domestic Subsidiary.

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

“Funded Debt” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through conforming changes made consistent with IFRS) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders

request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through conforming changes made consistent with IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Granting Lender**” has the meaning specified in Section 10.07(h).

“**Guarantee**” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or monetary other obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guaranteed Obligations**” has the meaning specified in Section 11.01.

“**Guarantor**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement” and shall include each Restricted Subsidiary that shall have become a Guarantor pursuant to Section 6.11. For avoidance of doubt, the Borrower in its sole discretion may cause any Restricted Subsidiary that is not a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to this Agreement in form and substance reasonably

satisfactory to the Administrative Agent, and any such Restricted Subsidiary shall be a Guarantor, Loan Party and Subsidiary Guarantor hereunder for all purposes.

“**Guaranty**” means, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“**Hazardous Materials**” means all materials, pollutants, contaminants, chemicals, compounds, constituents, substances or wastes, in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, mold, electromagnetic radio frequency or microwave emissions that are regulated pursuant to, or which could give rise to liability under, applicable Environmental Law.

“**Hedge Bank**” has the meaning set forth in the definition of Term Loan Secured Hedge Agreement.

“**Holdings**” has the meaning specified in the introductory paragraph to this Agreement.

“**Identified Participating Lenders**” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“**Identified Qualifying Lenders**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**IFRS**” means international accounting standards as promulgated by the International Accounting Standards Board.

“**Incremental Amendment**” has the meaning set forth in Section 2.14(f).

“**Incremental Commitments**” has the meaning set forth in Section 2.14(a).

“**Incremental Facility Closing Date**” has the meaning set forth in Section 2.14(d).

“**Incremental Lenders**” has the meaning set forth in Section 2.14(c).

“**Incremental Loan**” has the meaning set forth in Section 2.14(b).

“**Incremental Loan Request**” has the meaning set forth in Section 2.14(a).

“**Incremental Term Loan**” has the meaning set forth in Section 2.14(b).

“**Indebtedness**” means, as to any Person at a particular time, without duplication, all of the following:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation until such obligation is not paid after becoming due and payable and (iii) accruals for payroll and other liabilities accrued in the ordinary course);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests;

(h) if and to the extent that the foregoing would constitute indebtedness or a liability in accordance with GAAP; and

(i) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Net Debt and (B) in the case of the Borrower and its Subsidiaries, exclude all intercompany Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"Indemnified Liabilities" has the meaning set forth in Section 10.05.

"Indemnified Taxes" means, with respect to any Agent or any Lender, all Taxes other than (i) any Taxes imposed on or measured by its net income, however denominated, and

franchise (and similar) Taxes imposed on it in lieu of net income Taxes, imposed by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising solely from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, and/or enforcing, any Loan Document, (ii) any Taxes (other than Taxes described in clause (i) above) imposed by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising solely from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, and/or enforcing, any Loan Document, (iii) any Taxes attributable to the failure of such Agent or Lender to deliver the documentation required to be delivered pursuant to Section 3.01(d), (iv) any branch profits Taxes imposed by the United States under Section 884(a) of the Code, or any similar Tax, imposed by any jurisdiction described in clause (ii), (v) in the case of a Lender (other than an assignee pursuant to a request by Borrower under Section 3.07(a)), any U.S. federal withholding Tax that is imposed pursuant to any Law in effect at the time the Lender becomes a party to this Agreement, or designates a new Lending Office, except to the extent such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts or indemnification payments from the Borrower or Guarantor with respect to such withholding Tax pursuant to Section 3.01, and (vi) any U.S. federal taxes imposed under FATCA.

“**Indemnitees**” has the meaning set forth in Section 10.05.

“**Independent Financial Advisor**” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

“**Information**” has the meaning set forth in Section 10.08.

“**Intellectual Property Security Agreement**” has the meaning set forth in the Security Agreement.

“**Intercompany Note**” means a promissory note substantially in the form of Exhibit G.

“**Intercreditor Agreements**” means the ABL Intercreditor Agreement, the First Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement and the Replacement Intercreditor Agreement, collectively, in each case to the extent in effect.

“**Interest Payment Date**” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; *provided* that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under

which such Loan was made.

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

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period (other than an Interest Period having a duration of less than one month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

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

“Internally Generated Cash” means, with respect to any Person, cash funds of such Person and its Restricted Subsidiaries not constituting (x) proceeds of the issuance of (or contributions in respect of) Equity Interests of such Person, (y) proceeds of the incurrence of Indebtedness (other than extensions of credit under the ABL Facility or any other revolving credit or similar facility) by such Person or any of its Restricted Subsidiaries or (z) proceeds of Dispositions and Casualty Events.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of the Borrower and its Subsidiaries, intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment at any time shall be the amount actually invested (measured at the time made), without adjustment for subsequent increases or decreases in the value of such Investment, less any Returns to the Borrower or a Restricted Subsidiary in respect of such Investment.

“IP Rights” has the meaning set forth in Section 5.15.

“Junior Financing” has the meaning set forth in Section 7.13(a).

“**Junior Financing Documentation**” means any documentation governing any Junior Financing.

“**Junior Lien Intercreditor Agreement**” means an intercreditor agreement substantially in the form of Exhibit J hereto (which agreement in such form or with immaterial changes thereto the Administrative Agent is authorized to enter into) together with any material changes thereto in light of prevailing market conditions, which material changes shall be posted to the Lenders not less than five (5) Business Days before execution thereof and, if the Required Lenders shall not have objected to such changes within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement (with such changes) is reasonable and to have consented to such intercreditor agreement (with such changes) and to the Administrative Agent’s execution thereof.

“**Latest Maturity Date**” means, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time, including the latest maturity date of any Refinancing Term Loan, any Refinancing Term Commitment, any Extended Term Loan or any Incremental Term Loans, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“**Lender**” has the meaning specified in the introductory paragraph to this Agreement and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.”

“**Lending Office**” means, as to any Lender, such office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing).

“**Limited Originator Recourse**” means a letter of credit, cash collateral account or other such credit enhancement issued in connection with the incurrence of Indebtedness by a Securitization Subsidiary under a Qualified Securitization Financing.

“**Loan**” means an extension of credit under Article II by a Lender to the Borrower in the form of a Term Loan.

“**Loan Documents**” means, collectively, (i) this Agreement, (ii) the Term Notes, (iii) the Collateral Documents, (iv) any Refinancing Amendment, Incremental Amendment or Extension Amendment and (v) the Confidential Disclosure Letter.

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

“**London Banking Day**” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“**Margin Stock**” shall have the meaning assigned to such term in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Master Agreement**” has the meaning specified in the definition of “Swap Contract.”

“**Material Adverse Effect**” means a (a) material adverse effect on the business, operations, assets or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform any of their payment obligations under any Loan Document to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders or the Administrative Agent under any Loan Document.

“**Material Domestic Subsidiary**” means, at any date of determination, each of the Borrower’s Domestic Subsidiaries (a) whose total assets at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Closing Date, Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in clauses (a) or (b) comprise in the aggregate more than 5.0% of Total Assets as of the end of the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered pursuant to Section 6.01 or more than 5.0% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter or Test Period are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Domestic Subsidiaries as “Material Domestic Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 applicable to such Subsidiary.

“**Material Foreign Subsidiary**” means, at any date of determination, each of the Borrower’s Foreign Subsidiaries (a) whose total assets at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Closing Date, Foreign Subsidiaries not meeting the thresholds set forth in clauses (a) or (b) comprise in the aggregate more than 5.0% of Total Assets as of the end of the most recently ended fiscal quarter of the

Borrower for which financial statements have been delivered pursuant to Section 6.01 or more than 5.0% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter or Test Period are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Foreign Subsidiaries as “Material Foreign Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of the definition of “Collateral and Guarantee Requirement.”

“**Material Real Property**” means any fee-owned real property located in the United States that is owned by any Loan Party and that has a fair market value in excess of \$5,000,000 (at the Closing Date or, with respect to real property acquired after the Closing Date, at the time of acquisition, in each case, as reasonably estimated by the Borrower in good faith).

“**Material Subsidiary**” means any Material Domestic Subsidiary or any Material Foreign Subsidiary.

“**Maturity Date**” means (i) with respect to the Term B Loans, the seventh anniversary of the Closing Date; (ii) with respect to any tranche of Extended Term Loans, the final maturity date as specified in the applicable Term Loan Extension Request accepted by the respective Lender or Lenders, (iii) with respect to any Other Term Loans, the final maturity date as specified in the applicable Refinancing Amendment and (iv) with respect to any Incremental Loans, the final maturity date as specified in the applicable Incremental Amendment; *provided* that, in each case, if such day is not a Business Day, the Maturity Date shall be the Business Day immediately succeeding such day.

“**Maximum ABL Facility Amount**” means \$150,000,000.

“**Maximum Rate**” has the meaning specified in Section 10.10.

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

“**Mortgage Policies**” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgaged Properties**” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgages**” means collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by the Loan Parties in favor or for the benefit of the Administrative Agent on behalf of the Secured Parties creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the Administrative Agent, and any other mortgages executed and delivered pursuant to Sections 6.11 and 6.13, in each case, as the same may from time to time be amended, restated, supplemented or otherwise modified.

“**Multiemployer Plan**” means any employee benefit plan of the type described in

Section 4001(a)(3) of ERISA, to which a Loan Party, any Restricted Subsidiary or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding six plan years, has made or been obligated to make contributions.

“**Net Proceeds**” means:

(a) 100% of the cash proceeds actually received by the Borrower or any of the Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but in each case only as and when received) from any Disposition or Casualty Event, net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) the principal amount of any Indebtedness that is secured by a Lien (other than a Lien that ranks *pari passu* with or subordinated to the Liens securing the Obligations) on the asset subject to such Disposition or Casualty Event and that is required to be repaid in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents), together with any applicable premium, penalty, interest and breakage costs, (iii) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iii)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof, (iv) taxes paid or reasonably estimated to be payable as a result thereof, and (v) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Restricted Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction); *provided* that, subject to the restrictions set forth in Section 7.05(j), if the Borrower shall deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent promptly following receipt of any such proceeds setting forth the Borrower’s good faith intention to use any portion of such proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions or any acquisition of all or substantially all the assets of, or all the Equity Interests (other than directors’ qualifying shares) in, a Person or division or line of business of a Person (or any subsequent investment made in a Person, division or line of business previously acquired), in each case within 12 months of such receipt, such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 12 months of such receipt, so used or contractually committed to be so used (it being understood that if any portion of such proceeds are not so used within such 12 month period but within such 12-month period are contractually committed to be used, then upon the termination of such contract or if such Net Proceeds are not so used within the

later of such 12-month period and 180 days from the entry into such contractual commitment, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); *provided, further*, that no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless (x) such proceeds shall exceed \$10,000,000 or (y) the aggregate net proceeds exceeds \$20,000,000 in any fiscal year (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower shall be disregarded.

“**Nominal Shares**” means (a) for any Foreign Subsidiary, nominal issuances of Equity Interests in an aggregate amount not to exceed 0.5% of the Equity Interests of such Foreign Subsidiary on a fully-diluted basis and (b) in any case, director’s qualifying shares, in each case to the extent such issuances are required by applicable Law.

“**Non-Consenting Lender**” has the meaning set forth in Section 3.07(d).

“**Notice of Intent to Cure**” has the meaning set forth in Section 8.04.

“**Obligations**” means all (x) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Restricted Subsidiaries arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or Restricted Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (y) obligations of any Subsidiary arising under any Term Loan Secured Hedge Agreement. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their Restricted Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

“**Offered Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Offered Discount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**OID**” means original issue discount.

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

“**Other Taxes**” has the meaning specified in Section 3.01(b).

“**Other Term Loan Commitments**” shall mean one or more Classes of term loan commitments hereunder that result from a Refinancing Amendment.

“**Other Term Loans**” shall mean one or more Classes of Term Loans that result from a Refinancing Amendment.

“**Outstanding Amount**” means the outstanding principal amount of Term Loans after giving effect to any borrowings and prepayments or repayments of Term Loans occurring on such date.

“**Overnight Rate**” means, for any day, the greater of the Federal Funds Rate and an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

“**Pari Passu Obligations**” has the meaning set forth in the Security Agreement.

“**Participant**” has the meaning specified in Section 10.07(e).

“**Participant Register**” has the meaning specified in Section 10.07(e).

“**Participating Lender**” has the meaning set forth in Section 2.05(a)(v)(C)(2).

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

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

“Perfection Certificate” means a certificate in the form of Exhibit II to the Security Agreement or any other form reasonably approved by the Administrative Agent, as the same shall be supplemented from time to time.

“Permitted Acquisition” has the meaning set forth in Section 7.02(i).

“Permitted First Priority Refinancing Debt” shall mean any secured Indebtedness (including any Registered Equivalent Notes) incurred by the Borrower in the form of one or more series of senior secured notes or loans; *provided* that (i) such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Obligations and is not secured by any property or assets of Holdings, the Borrower or any Restricted Subsidiary other than the Collateral, (ii) notwithstanding anything contained in Section 7.03(c), such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, (iii) such Indebtedness does not mature or have scheduled amortization or payments of principal (other than customary offers to repurchase upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the date that is the Latest Maturity Date of any Loan outstanding at the time such Indebtedness is incurred or issued, (iv) the security agreements relating to such Indebtedness are substantially the same as or more favorable to the Loan Parties than the Collateral Documents (with such differences as are reasonably satisfactory to the Administrative Agent) and (v) a Senior Representative acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of (I) the ABL Intercreditor Agreement and (II) a First Lien Intercreditor Agreement; *provided* that if such Indebtedness is the initial Permitted First Priority Refinancing Debt incurred by the Borrower, then the Borrower, Holdings, the Subsidiary Guarantors, the Administrative Agent and the Senior Representative for such Indebtedness shall have executed and delivered a First Lien Intercreditor Agreement. Permitted First Priority Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

“Permitted Junior Priority Refinancing Debt” means secured Indebtedness (including any Registered Equivalent Notes) incurred by the Borrower in the form of one or more series of second lien (or other junior lien) secured notes or second lien (or other junior lien) secured loans; *provided* that (i) such Indebtedness is secured by the Collateral on a second priority (or other junior priority) basis to the liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt and is not secured by any property or assets of Holdings, the Borrower or any Restricted Subsidiary other than the Collateral, (ii) such Indebtedness may be secured by a Lien on the Collateral that is junior to the Liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt, notwithstanding any provision to the contrary contained in the definition of “Credit Agreement Refinancing Indebtedness,” (iii) a Senior Representative acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of (I) the ABL Intercreditor Agreement and (II) a Junior Lien Intercreditor Agreement; *provided* that if such Indebtedness is the initial Permitted Junior Priority Refinancing Debt incurred by the Borrower, then Holdings, the Borrower, the Subsidiary Guarantors, the Administrative Agent and the Senior Representative for such Indebtedness shall have executed and delivered a Junior Lien Intercreditor Agreement and (iv) such Indebtedness meets the Permitted Other Debt Conditions. Permitted Junior Priority Refinancing Debt will include any Registered Equivalent Notes issued in exchange therefor.

“Permitted Other Debt Conditions” means that such applicable debt (i) does not mature or have scheduled amortization payments of principal or payments of principal and is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (except customary asset sale or change of control provisions that provide for the prior repayment in full of the Loans and all other Obligations), in each case prior to the Latest Maturity Date at the time such Indebtedness is incurred, (ii) notwithstanding anything contained in Section 7.03(c), is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, and (iii) to the extent secured, the security agreements relating to such Indebtedness are substantially the same as or more favorable to the Loan Parties than the Collateral Documents (with such differences as are reasonably satisfactory to the Administrative Agent).

“Permitted Ratio Debt” means Indebtedness of the Borrower or any Restricted Subsidiary, *provided* that immediately after giving Pro Forma Effect thereto and to the use of the proceeds thereof, (i) no Event of Default shall be continuing or result therefrom, (ii) the Borrower and the Restricted Subsidiaries will be in Pro Forma Compliance with the covenants set forth in Section 7.11, (iii) the Total Leverage Ratio is no greater than 5.25:1.00, (iv) if such Indebtedness is secured, the aggregate principal amount of such Indebtedness shall not exceed \$220,000,000 minus the aggregate amount of all Incremental Term Loans incurred pursuant to Section 2.14(d)(v)(A) minus the aggregate amount of incremental commitments that shall have become effective under the ABL Facility after the Closing Date, (v) such Indebtedness does not mature prior to the date that is ninety-one (91) days after the Latest Maturity Date at the time such Indebtedness is incurred, (vi) if such Indebtedness is incurred or guaranteed on a secured basis by a Loan Party, such Indebtedness shall be in the form of debt securities or Indebtedness that is not a credit facility that could have been incurred as an Incremental Term Loan, (vii) such Indebtedness shall have terms and conditions (other than pricing, rate floors, discounts, fees, premiums and optional prepayment or redemption provisions) that are not materially less favorable (when taken as a whole) to the Borrower than the terms and conditions of the Loan Documents (when taken as a whole), (viii) if such Indebtedness is incurred or guaranteed on a secured basis by a Loan Party, such Indebtedness is subject to the Intercreditor Agreements referred to in Section 7.01(cc) and (ix) any such Indebtedness incurred or guaranteed by a Restricted Subsidiary that is not a Loan Party, together with any Indebtedness incurred or guaranteed by a Restricted Subsidiary that is not a Loan Party pursuant to Section 7.03(g), does not exceed in the aggregate at any time outstanding the greater of \$35,000,000 and 2.00% of Total Assets, in each case determined at the time of incurrence; *provided* that a certificate of the Borrower as to the satisfaction of the conditions described in clause (vii) above delivered at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirements of such clause (vii), shall be conclusive unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination (including a description of the basis upon which it disagrees).

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts owing or paid related to such

Indebtedness, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Sections 7.03(e) or (f), at the time thereof, no Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended and (e) notwithstanding anything contained in Section 7.03(c), such modification, refinancing, refunding, renewal, replacement or extension is incurred by one or more Persons who is an obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended.

“Permitted Unsecured Refinancing Debt” means unsecured Indebtedness (including any Registered Equivalent Notes) incurred by the Borrower in the form of one or more series of senior unsecured notes or loans; *provided* that (i) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness and (ii) meets the Permitted Other Debt Conditions.

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

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

“Platform” has the meaning set forth in Section 6.01(d).

“Pledged Debt” has the meaning set forth in the Security Agreement.

“Pledged Equity” has the meaning set forth in the Security Agreement.

“Proceeding” has the meaning set forth in Section 10.05.

“Proceeds” has the meaning set forth in Section 9-102(a)(64) of the UCC.

“Pro Forma Balance Sheet” has the meaning set forth in Section 5.05(c).

“Pro Forma Basis” and **“Pro Forma Effect”** means, with respect to compliance with

any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.09.

“Pro Forma Compliance” means, with respect to the covenants in Section 7.11, compliance on a Pro Forma Basis with such covenants in accordance with Section 1.09.

“Pro Forma Financial Statements” has the meaning set forth in Section 5.05(c).

“Pro Rata Share” means, with respect to each Lender, at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments and, if applicable and without duplication, Term Loans of such Lender under the applicable Facility or Facilities at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable Facility or Facilities and, if applicable and without duplication, Term Loans under the applicable Facility or Facilities at such time.

“Projections” has the meaning set forth in Section 6.01(c).

“Public Lender” has the meaning set forth in Section 6.01(d).

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Qualified Securitization Financing” means any Securitization Financing of a Securitization Subsidiary that meets the following conditions: (a) such Qualified Securitization Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the Securitization Subsidiary, (b) all sales and/or contributions of Securitization Assets and related assets to the Securitization Subsidiary are made at fair market value and (c) the financing terms, covenants, termination events and other provisions thereof, including any Standard Securitization Undertakings, shall be market terms. The grant of a security interest in any Securitization Assets of the Borrower or any of the Restricted Subsidiaries (other than a Securitization Subsidiary) to secure Indebtedness under this Agreement prior to engaging in any Securitization Financing shall not be deemed a Qualified Securitization Financing.

“Qualifying Lender” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“Real Property” means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or otherwise held by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Refinanced Debt” has the meaning set forth in the definition of Credit Agreement Refinancing Indebtedness.

“**Refinanced Term Loans**” has the meaning set forth in Section 10.01.

“**Refinancing**” means the prepayment of all indebtedness under that certain Credit Agreement, dated as of March 24, 2010 (as amended, restated, supplemented, or modified from time to time prior to the Closing Date), among the Borrower, Holdings, Bank of America, N.A., as administrative agent and collateral agent, the lenders party thereto, and the other agents party thereto, shall have been paid in full, and all commitments, security interests and guaranties in connection therewith shall have been terminated and released.

“**Refinancing Amendment**” means an amendment to this Agreement executed by each of (a) the Borrower, (b) the Administrative Agent, (c) each Additional Refinancing Lender and (d) each Lender that agrees to provide any portion of Refinancing Term Loans in accordance with Section 2.15.

“**Refinancing Series**” means all Refinancing Term Loans or Refinancing Term Commitments that are established pursuant to the same Refinancing Amendment (or any subsequent Refinancing Amendment to the extent such Refinancing Amendment expressly provides that the Refinancing Term Loans or Refinancing Term Commitments provided for therein are intended to be a part of any previously established Refinancing Series) and that provide for the same Effective Yield and amortization schedule.

“**Refinancing Term Commitments**” means one or more term loan commitments hereunder that fund Refinancing Term Loans of the applicable Refinancing Series hereunder pursuant to a Refinancing Amendment.

“**Refinancing Term Loans**” means one or more term loans hereunder that result from a Refinancing Amendment.

“**Register**” has the meaning set forth in Section 10.07(d).

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in an offering pursuant to Rule 144A under the Securities Act or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

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

“**Release**” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing or migrating in, into, onto or through the Environment or from or through any facility, property or equipment.

“**Replacement Intercreditor Agreement**” means an intercreditor agreement between the Administrative Agent, the ABL Administrative Agent and the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent, entered into at the option of the Borrower

which, in the event of a refinancing of the initial ABL Credit Agreement, replaces the ABL Intercreditor Agreement in its entirety and pursuant to which the Liens on the Collateral securing the Obligations are not subordinated to any other Liens on any portion of the Collateral.

“Replacement Term Loans” has the meaning specified in Section 10.01.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the otherwise applicable notice period has been waived by regulation or otherwise by the PBGC.

“Repricing Transaction” means the prepayment, refinancing, substitution or replacement of all or a portion of the Term B Loans with the incurrence by Holdings, the Borrower or any Subsidiary of any debt financing having an effective interest cost or weighted average yield (with the comparative determinations to be made by the Administrative Agent consistent with generally accepted financial practices, after giving effect to, among other factors, margin, interest rate floors, upfront or similar fees or original issue discount shared with all providers of such financing, but excluding the effect of any arrangement, structuring, syndication or other fees payable in connection therewith that are not shared with all providers of such financing, and without taking into account any fluctuations in the Eurocurrency Rate (other than due to the last proviso of the definition thereof)) that is less than the effective interest cost or weighted average yield (as determined by the Administrative Agent on the same basis) of such Term B Loans so repaid, refinanced, substituted or replaced, including without limitation, as may be effected through any amendment to this Agreement relating to the interest rate for, or weighted average yield of, such Term B Loans or the incurrence of any Replacement Term Loans.

“Request for Credit Extension” means a Committed Loan Notice.

“Required Class Lenders” means, with respect to any Class on any date of determination, Lenders having more than 50% of the sum of (i) the outstanding Loans under such Class and (ii) the aggregate unused Commitments under such Facility.

“Required Facility Lenders” mean, as of any date of determination, with respect to any Facility, Lenders having more than 50% of the sum of (a) the Total Outstandings under such Facility and (b) the aggregate unused Commitments under such Facility.

“Required Lenders” means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings and (b) aggregate unused Term Commitments.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, chief administrative officer, secretary or assistant secretary, treasurer or assistant treasurer or other similar officer of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Cash” means cash and Cash Equivalents held by Restricted Subsidiaries that

is contractually restricted from being distributed to the Borrower.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower’s or a Restricted Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof).

“Restricted Subsidiary” means any Subsidiary of Holdings other than an Unrestricted Subsidiary.

“Retained Percentage” means, with respect to any Excess Cash Flow Period (a) 100% minus (b) the Applicable ECF Percentage with respect to such Excess Cash Flow Period.

“Returns” means, with respect to any Investment, any dividends, distributions, interest, fees, premium, return of capital, repayment of principal, income, profits (from a Disposition or otherwise) and other amounts received or realized in respect of such Investment.

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

“Same Day Funds” means immediately available funds.

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

“Secured Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Hedge Banks and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Securities Act” means the Securities Act of 1933, as amended.

“Securitization Assets” means (a) the accounts receivable subject to a Qualified Securitization Financing and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

“Securitization Fees” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that

is not a Securitization Subsidiary in connection with any Qualified Securitization Financing.

“Securitization Financing” means any transaction or series of transactions that may be entered into by the Borrower or any of its Subsidiaries pursuant to which the Borrower or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Securitization Subsidiary (in the case of a transfer by the Borrower or any of its Subsidiaries) or (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries, and any assets related thereto, including all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving Securitization Assets.

“Securitization Repurchase Obligation” means any obligation of a seller of Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets arising as a result of a breach of a Standard Securitization Undertaking, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“Securitization Subsidiary” means a wholly owned Subsidiary of the Borrower (or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets) that engages in no activities other than in connection with the financing of Securitization Assets of the Borrower or its Subsidiaries, all proceeds thereof and all rights (contingent and other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the board of directors of the Borrower or such other Person (as provided below) as a Securitization Subsidiary and (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by Holdings, the Borrower or any other Subsidiary of the Borrower, other than another Securitization Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings or Limited Originator Recourse), (ii) is recourse to or obligates Holdings, the Borrower or any other Subsidiary of the Borrower, other than another Securitization Subsidiary, in any way other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse or (iii) subjects any property or asset of Holdings, the Borrower or any other Subsidiary of the Borrower, other than another Securitization Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings, (b) with which none of Holdings, the Borrower or any other Subsidiary of the Borrower, other than another Securitization Subsidiary, has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to Holdings, the Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower and (c) to which none of Holdings, the Borrower or any other Subsidiary of the Borrower, other than another Securitization Subsidiary, has any obligation to maintain or preserve such entity’s financial condition or cause such entity to achieve certain levels of operating results. Any such designation by the board of directors of the Borrower or such other Person shall be evidenced to the Administrative Agent by delivery to the Administrative Agent of a certified copy

of the resolution of the board of directors of the Borrower or such other Person giving effect to such designation and a certificate executed by a Responsible Officer certifying that such designation complied with the foregoing conditions.

“**Security Agreement**” means a Security Agreement substantially in the form of Exhibit E.

“**Security Agreement Supplement**” has the meaning specified in the Security Agreement.

“**Seller**” has the meaning specified in the preliminary statements to this Agreement.

“**Senior Notes**” means the \$250,000,000 in aggregate principal amount of the Borrower’s 8.125% senior unsecured notes due 2020 and any Registered Equivalent Notes having substantially identical terms and issued pursuant to the Senior Notes Indenture in exchange for the initial, unregistered senior unsecured notes.

“**Senior Notes Indenture**” means the Indenture for the Senior Notes, dated as of January 31, 2012, between the Borrower and U.S. Bank, National Association, as trustee, as the same may be amended, modified, supplemented, replace or refinanced to the extent not prohibited by this Agreement.

“**Senior Representative**” means, with respect to any series of Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Solicited Discount Proration**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Solicited Discounted Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Solicited Discounted Prepayment Notice**” means a written notice of the Borrower of Solicited Discounted Prepayment Offers made pursuant to Section 2.05(a)(v)(D) substantially in the form of Exhibit E-6.

“**Solicited Discounted Prepayment Offer**” means the irrevocable written offer by each Lender, substantially in the form of Exhibit E-7, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“**Solicited Discounted Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Solvent**” and “**Solvency**” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person and its Subsidiaries,

on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of such Person and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) such Person and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and (d) such Person and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“**SPC**” has the meaning specified in Section 10.07(h).

“**Specified Discount**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Prepayment Notice**” means a written notice of the Borrower Offer of Specified Discount Prepayment made pursuant to Section 2.05(a)(v)(B) substantially in the form of Exhibit E-8.

“**Specified Discount Prepayment Response**” means the irrevocable written response by each Lender, substantially in the form of Exhibit E-9, to a Specified Discount Prepayment Notice.

“**Specified Discount Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Proration**” has the meaning set forth in Section 2.05(a)(v)(B)(3).

“**Specified Junior Financing Obligations**” means any obligations in respect of any Junior Financing in respect of which any Loan Party is an obligor in a principal amount in excess of the Threshold Amount.

“**Specified Representations**” means those representations and warranties made by the Borrower in Sections 5.01(a), 5.01(b)(ii), 5.02(a), 5.02(b)(i), 5.02(b)(iii), 5.03 (to the extent related to consents or approvals under Organization Documents of any Loan Party or under any material Law), 5.04, 5.12, 5.16, 5.17, 5.18 and 5.19 (subject, in the case of Section 5.19, to the proviso at the end of Section 4.01(a)).

“**Specified Transaction**” means any Investment that results in a Person becoming a Restricted Subsidiary, any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, any Permitted Acquisition or any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower, any Investment constituting an acquisition of assets constituting a business unit, line of business or division of, or all or substantially all of the Equity Interests of, another Person or any Disposition of a business unit, line of business or

division of the Borrower or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise, or any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit), Restricted Payment or Incremental Term Loan that by the terms of this Agreement requires such test to be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect.”

“**Split Brands**” means the Debrox and Gly-Oxide brands.

“**Split Brands Acquisition**” has the meaning specified in the preliminary statements to this Agreement.

“**Split Brands Acquisition Agreement**” has the meaning specified in the preliminary statements to this Agreement.

“**Split Brands Cutoff Date**” has the meaning specified in Section 2.05(b)(viii).

“**Standard Securitization Undertakings**” means representations, warranties, covenants and indemnities entered into by the Borrower or any Subsidiary of the Borrower that are customary in a Securitization Financing.

“**Submitted Amount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Submitted Discount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which (i) a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, (ii) more than half of the issued share capital is at the time beneficially owned or (iii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” means any Guarantor other than Holdings.

“**Successor Company**” has the meaning specified in Section 7.04(d).

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of

any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

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

“**Syndication Agent**” means Morgan Stanley Senior Funding, Inc., in its capacity as syndication agent.

“**Tax Group**” has the meaning specified in Section 7.06(h)(iv).

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

“**Term B Commitment**” means, as to each Term Lender, its obligation to make a Term B Loan to the Borrower pursuant to Section 2.01 in an aggregate amount not to exceed the amount set forth opposite such Lender’s name in Section 1.01A of the Confidential Disclosure Letter under the caption “Term B Commitment” or in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14). The initial aggregate amount of the Term B Commitments is \$660,000,000.

“**Term B Loans**” means the term loans made by the Lenders on the Closing Date to the Borrower pursuant to Section 2.01.

“**Term Commitment**” means, as to each Term Lender, its obligation to make a Term Loan to the Borrower hereunder, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Term Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment or (iv) an Extension. The initial amount of each Term Lender’s Commitment is set forth in Section 1.01A of the Confidential Disclosure Letter under the caption “Term B Commitment” or, otherwise, in the Assignment and Assumption, Incremental Amendment or Refinancing Amendment pursuant to which such Lender shall have assumed its Commitment, as the case may be.

“**Term Lender**” means, at any time, any Lender that has a Term Commitment or a Term Loan at such time.

“**Term Loan**” means any Term B Loan, Incremental Term Loan, Other Term Loan or Extended Term Loan, as the context may require.

“**Term Loan Extension Request**” has the meaning provided in Section 2.16(a).

“**Term Loan Extension Series**” has the meaning provided in Section 2.16(a).

“**Term Loan Increase**” has the meaning set forth in Section 2.14(a).

“**Term Loan Secured Hedge Agreement**” means any Swap Contract permitted under Article VII that is entered into by and between the Borrower or any Restricted Subsidiary and any Person that is a Lender or an Affiliate of a Lender at the time such Swap Contract is entered into (any such Person, a “**Hedge Bank**”); provided that (a) such Person is designated a “Hedge Bank” with respect to such Term Loan Secured Hedge Agreement in a writing from the Borrower to the Administrative Agent, and (other than a Person already party hereto as a Lender) that delivers to the Administrative Agent a letter agreement reasonably satisfactory to it (i) appointing the Administrative Agent as its agent under the applicable Loan Documents and (ii) agreeing to be bound by Sections 10.05, 10.15 and 10.16 and Article IX as if it were a Lender and (b) such Swap Contract is designated in a writing from the Borrower to the Administrative Agent as a “Term Loan Secured Hedge Agreement”.

“**Term Note**” means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit C hereto, evidencing the aggregate Indebtedness of such Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

“**Test Period**” means, for any date of determination under this Agreement, the four consecutive fiscal quarters of the Borrower most recently ended as of such date of determination.

“**Threshold Amount**” means \$25,000,000.

“**Total Assets**” means the total assets of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Borrower delivered pursuant to Section 6.01(a) or (b) or, for the period prior to the time any such statements are so delivered pursuant to Section 6.01(a) or (b), the Pro Forma Financial Statements.

“**Total Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Total Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans.

“**Transaction Expenses**” means any fees or expenses incurred or paid by Holdings, the Borrower or any of their respective Subsidiaries in connection with the Transactions (including expenses in connection with hedging transactions), this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

“**Transactions**” means, collectively, (a) the Acquisition and other related transactions contemplated by the Acquisition Agreement, (b) the issuance of the Senior Notes, (c) the funding of the Term B Loans on the Closing Date and the execution and delivery of Loan Documents to be entered into on the Closing Date, (d) the execution and delivery by the Borrower and the Subsidiaries party thereto of the ABL Facility Documentation, (e) the Refinancing and (f) the payment of Transaction Expenses.

“**Transferred Guarantor**” has the meaning specified in Section 11.09.

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

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

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

“**United States Tax Compliance Certificate**” has the meaning set forth in Section 3.01(d)(ii)(C) and is in substantially the form of Exhibit I hereto.

“**Unrestricted Subsidiary**” means any Subsidiary of the Borrower designated by the board of directors of the Borrower as an Unrestricted Subsidiary pursuant to Section 6.14 subsequent to the Closing Date and each Securitization Subsidiary.

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness.

“**wholly owned**” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

Section 1.02 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.
- (c) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.
- (d) The term “including” is by way of example and not limitation.
- (e) The word “or” is not exclusive.
- (f) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- (g) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”
- (h) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.
- (i) For purposes of determining compliance with any Section of Article VII at any time, in the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), Disposition, Restricted Payment, Affiliate transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of one or more than one of the categories of transactions permitted pursuant to any clause of such Sections, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time.

Section 1.03 Accounting Terms.

All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein.

Section 1.04 Rounding.

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

Section 1.05 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by the Loan Documents; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day.

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

Section 1.07 Timing of Payment of Performance.

When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.08 Cumulative Credit Transactions.

If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

Section 1.09 Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Total Leverage Ratio, the Secured Leverage Ratio, the Consolidated First Lien Net Leverage Ratio and the Consolidated Cash Interest Coverage Ratio shall be calculated in the manner prescribed by this Section 1.09; *provided* that notwithstanding anything to the contrary in clauses (b), (c) or (d) of this Section 1.09, when calculating the Consolidated First Lien Net Leverage Ratio, the Total Leverage Ratio and the Consolidated Cash Interest Coverage Ratio, each as applicable, for purposes of (i) the definition of "Applicable Rate," (ii) the definition of

“Applicable ECF Percentage of Excess Cash Flow” and (iii) determining actual compliance (and not Pro Forma Compliance or compliance on a Pro Forma Basis) with any covenant pursuant to Section 7.11, the events described in this Section 1.09 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to the “Test Period” for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower); *provided* that, the provisions of this sentence shall not apply for purposes of calculating the Consolidated First Lien Net Leverage Ratio, the Total Leverage Ratio and the Consolidated Cash Interest Coverage Ratio for purposes of the definition of “Applicable Rate,” the definition of “Applicable ECF Percentage of Excess Cash Flow” and determining actual compliance with Section 7.11 (other than for the purpose of determining *pro forma* compliance with Section 7.11), each of which shall be based on the financial statements delivered pursuant to Section 6.01(a) or (b), as applicable, for the relevant Test Period.

(b) For purposes of calculating any financial ratio or test, Specified Transactions (with any incurrence or repayment of any Indebtedness in connection therewith to be subject to clause (d) of this Section 1.09) that have been made (i) during the applicable Test Period and (ii) if applicable as described in clause (a) above, subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.09, then such financial ratio or test shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.09.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower and include, for the avoidance of doubt, the amount of “run-rate” cost savings, operating expense reductions and synergies projected by the Borrower in good faith to be realized as a result of specified actions taken, committed to be taken or expected to be taken (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period) and “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or expected to be taken (including any savings expected to result from the elimination of a public target’s compliance costs with public company requirements) net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of such financial ratios or tests and during any subsequent Test Period in which the effects thereof are expected to be realized relating to such Specified Transaction; *provided* that (A) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (B) such actions have been taken or with respect to which substantial steps have been taken (in the good faith determination of the

Borrower) within eighteen (18) months after the date of such Specified Transaction, and (C) no amounts shall be added pursuant to this clause (c) to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, with respect to such period; *provided* that any increase to Consolidated EBITDA as a result of cost savings, operating expense reductions and synergies pursuant to this Section 1.09(c) shall be subject to the limitation set forth in the proviso of clause (viii) of the definition of Consolidated EBITDA.

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of any financial ratio or test (in each case, other than Indebtedness incurred or repaid under any revolving credit facility), (i) during the applicable Test Period or (ii) subject to clause (a) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period (or the first day of the applicable Test Period solely in the case of the Consolidated Cash Interest Coverage Ratio).

(e) If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Consolidated Cash Interest Coverage Ratio is made had been the applicable rate for the entire period (taking into account any hedging obligations applicable to such Indebtedness); *provided*, in the case of repayment of any Indebtedness, to the extent actual interest related thereto was included during all or any portion of the applicable Test Period, the actual interest may be used for the applicable portion of such Test Period. Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or Restricted Subsidiary may designate.

(f) At any time prior to June 30, 2012, any provision requiring the *pro forma* compliance with Section 7.11 shall be made assuming that compliance with the Consolidated Cash Interest Coverage Ratio and Total Leverage Ratio set forth in Section 7.11 for the Test Period ending on June 30, 2012 is required with respect to the most recent Test Period prior to such time.

Section 1.10 Currency Generally.

For purposes of determining compliance with Sections 7.01, 7.02 and 7.03 with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder).

ARTICLE II.
THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01 The Loans.

Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make to the Borrower on the Closing Date one or more Borrowings denominated in Dollars in an aggregate amount not to exceed at any time outstanding the amount of such Term Lender's Term Commitment. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

Section 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Term Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice, to the Administrative Agent (*provided* that the notices in respect of the initial Credit Extensions may be conditioned on the closing of the Acquisition), which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (New York, New York time) (1) three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans or any conversion of Base Rate Loans to Eurocurrency Rate Loans, and (2) on the requested date of any Borrowing of Base Rate Loans; *provided* that the notice referred to in subclause (1) above may be delivered no later than one (1) Business Day prior to the Closing Date in the case of initial Credit Extensions. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Section 2.14, each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000, in excess thereof. Except as provided in Section 2.14, each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Term Loans from one Type to the other or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Term Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) wire instructions of the account(s) to which funds are to be disbursed (it being understood, for the avoidance of doubt, that the amount to be disbursed to any particular account may be less than the minimum or multiple limitations set forth above so long as the aggregate amount to be disbursed to all such accounts pursuant to such Borrowing meets such minimums and multiples). If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fail to give a timely notice requesting a conversion or continuation, then the applicable Term Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one

(1) month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation described in Section 2.02(a). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. The Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account(s) of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. During the occurrence and continuation of an Event of Default, the Administrative Agent or the Required Lenders may require that no Loans may be converted to or continued as Eurocurrency Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Citi's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Term Loans from one Type to the other and all continuations of Term Loans as the same Type, there shall not be more than six (6) Interest Periods in effect; *provided* that after the establishment of any new Class of Loans pursuant to a Refinancing Amendment or Extension Amendment, the number of Interest Periods otherwise permitted by this Section 2.02(e) shall increase by three (3) Interest Periods for each applicable Class so established.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(g) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro

Rata Share or other applicable share provided for under this Agreement available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (b) above, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Overnight Rate plus any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(g) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.03 [Reserved].

Section 2.04 [Reserved].

Section 2.05 Prepayments.

(a) *Optional.* (1) The Borrower may, upon notice to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay any Class or Classes of Term Loans in whole or in part without premium or penalty; *provided* that (1) such notice must be received by the Administrative Agent not later than 11:00 a.m. (New York City time) (A) three (3) Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (B) on the date of prepayment of Base Rate Loans; (2) any prepayment of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000 in excess thereof; and (3) any prepayment of Base Rate Loans shall be in a minimum principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(a), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares or other applicable share provided for under this Agreement.

(ii) [Reserved].

(iii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(a) if such prepayment would have resulted from a refinancing of the applicable Facility, which refinancing shall not be consummated or shall otherwise be delayed.

(iv) Voluntary prepayments of any Class of Term Loans permitted hereunder shall be applied to the remaining scheduled installments of principal thereof pursuant to Section 2.07 in a manner determined at the discretion of the Borrower and specified in the notice of prepayment (and absent such direction, in direct order of maturity).

(v) Notwithstanding anything in any Loan Document to the contrary, so long as no Default or Event of Default has occurred and is continuing, any Company Party may prepay the outstanding Term Loans (which shall, for the avoidance of doubt, be automatically and permanently canceled immediately upon such prepayment) (or Holdings or any of its Subsidiaries may purchase such outstanding Loans and immediately cancel them) on the following basis:

(A) Any Company Party shall have the right to make a voluntary prepayment of Term Loans at a discount to par pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers (any such prepayment, the “**Discounted Term Loan Prepayment**”), in each case made in accordance with this Section 2.05(a)(v); *provided* that no Company Party shall initiate any action under this Section 2.05(a)(v) in order to make a Discounted Term Loan Prepayment unless (I) at least ten (10) Business Days shall have passed since the consummation of the most recent Discounted Term Loan Prepayment as a result of a prepayment made by a Company Party on the applicable Discounted Prepayment Effective Date; or (II) at least three (3) Business Days shall have passed since the date the Company Party was notified that no Term Lender was willing to accept any prepayment of any Term Loan at the Specified Discount, within the Discount Range or at any discount to par value, as applicable, or in the case of Borrower Solicitation of Discounted Prepayment Offers, the date of any Company Party’s election not to accept any Solicited Discounted Prepayment Offers.

(B) (1) Subject to the proviso to subsection (A) above, any Company Party may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with five (5) Business Days’ notice in the form of a Specified Discount Prepayment Notice; *provided* that (I) any such offer shall be made available, at the sole discretion of the Company Party, to (x) each Term Lender and/or (y) each Term Lender with respect to any Class of Term Loans on an individual tranche basis, (II) any such offer shall specify the aggregate principal amount offered to be prepaid (the “**Specified Discount Prepayment Amount**”) with respect to each applicable tranche, the tranche or tranches of Term Loans subject to such offer and the specific percentage discount to par (the “**Specified Discount**”) of such Term Loans to be prepaid (it being understood that different Specified Discounts and/or Specified Discount Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(B)), (III) the Specified Discount

Prepayment Amount shall be in an aggregate amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (the “**Specified Discount Prepayment Response Date**”).

(2) Each Term Lender receiving such offer shall notify the Auction Agent (or its delegate) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Term Loans at the Specified Discount and, if so (such accepting Lender, a “**Discount Prepayment Accepting Lender**”), the amount and the tranches of such Lender’s Term Loans to be prepaid at such offered discount. Each acceptance of a Discounted Term Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Term Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(3) If there is at least one Discount Prepayment Accepting Lender, the relevant Company Party will make a prepayment of outstanding Term Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and tranches of Term Loans specified in such Lender’s Specified Discount Prepayment Response given pursuant to subsection (2) above; *provided* that, if the aggregate principal amount of Term Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the “**Specified Discount Proration**”). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Company Party of the respective Term Lenders’ responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the tranches of Term Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, tranche and Type of Term Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the Company Party and such Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with

subsection (F) below (subject to subsection (J) below).

(C) (1) Subject to the proviso to subsection (A) above, any Company Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Discount Range Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Term Lender and/or (y) each Term Lender with respect to any Class of Term Loans on an individual tranche basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the "**Discount Range Prepayment Amount**"), the tranche or tranches of Term Loans subject to such offer and the maximum and minimum percentage discounts to par (the "**Discount Range**") of the principal amount of such Term Loans with respect to each relevant tranche of Term Loans willing to be prepaid by such Company Party (it being understood that different Discount Ranges and/or Discount Range Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such event, each such offer will be treated as separate offer pursuant to the terms of this Section 2.05(a)(v)(C)), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (the "**Discount Range Prepayment Response Date**"). Each Term Lender's Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the "**Submitted Discount**") at which such Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable tranche or tranches and the maximum aggregate principal amount and tranches of such Lender's Term Loans (the "**Submitted Amount**") such Term Lender is willing to have prepaid at the Submitted Discount. Any Term Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Term Loan Prepayment of any of its Term Loans at any discount to their par value within the Discount Range.

(2) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Term Loans to be prepaid at such Applicable Discount in accordance with this subsection (C). The relevant Company Party agrees to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers received by Auction Agent by the Discount Range Prepayment Response Date, in the order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the "**Applicable Discount**") which yields a Discounted Term Loan

Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Term Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Term Lender, a “**Participating Lender**”).

(3) If there is at least one Participating Lender, the relevant Company Party will prepay the respective outstanding Term Loans of each Participating Lender in the aggregate principal amount and of the tranches specified in such Lender’s Discount Range Prepayment Offer at the Applicable Discount; *provided* that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Term Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the “**Identified Participating Lenders**”) shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Discount Range Proration**”). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Company Party of the respective Term Lenders’ responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount of the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount and tranches of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and tranches of such Term Lender to be prepaid at the Applicable Discount on such date, and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Company Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Subject to the proviso to subsection (A) above, any Company Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days’ notice in the form of a Solicited Discounted Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Term Lender and/or (y) each Lender with respect to any Class of Loans on an individual tranche basis, (II) any such notice shall specify the maximum aggregate amount of the Term Loans (the “**Solicited Discounted Prepayment Amount**”) and the tranche or tranches of Term Loans the Borrower is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different tranches of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms

of this Section 2.05(a)(v)(D)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Term Lenders (the “**Solicited Discounted Prepayment Response Date**”). Each Term Lender’s Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date, and (z) specify both a discount to par (the “**Offered Discount**”) at which such Term Lender is willing to allow prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and tranches of such Term Loans (the “**Offered Amount**”) such Term Lender is willing to have prepaid at the Offered Discount. Any Term Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Term Loans at any discount.

(2) The Auction Agent shall promptly provide the relevant Company Party with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Company Party shall review all such Solicited Discounted Prepayment Offers and select the largest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the Company Party (the “**Acceptable Discount**”), if any. If the Company Party elects to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by such Company Party from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the “**Acceptance Date**”), the Company Party shall submit an Acceptance and Prepayment Notice to the Auction Agent setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the Company Party by the Acceptance Date, such Company Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the “**Discounted Prepayment Determination Date**”), the Auction Agent will determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the tranches of Term Loans (the “**Acceptable Prepayment Amount**”) to be prepaid by the relevant Company Party at the Acceptable Discount in accordance with this Section 2.05(a)(v)(D). If the Company Party elects to accept any Acceptable Discount, then the Company Party agrees to accept all Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Term Lender that has submitted a

Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a “**Qualifying Lender**”). The Company Party will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the tranches specified in such Lender’s Solicited Discounted Prepayment Offer at the Acceptable Discount; *provided* that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Term Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the “**Identified Qualifying Lenders**”) shall be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Solicited Discount Proration**”). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (I) the relevant Company Party of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the tranches to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the tranches to be prepaid to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the tranches of such Term Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Company Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(E) In connection with any Discounted Term Loan Prepayment, the Company Parties and the Term Lenders acknowledge and agree that the Auction Agent may require as a condition to any Discounted Term Loan Prepayment, the payment of customary fees and expenses from a Company Party in connection therewith.

(F) If any Term Loan is prepaid in accordance with paragraphs (B) through (D) above, a Company Party shall prepay such Term Loans on the Discounted Prepayment Effective Date. The relevant Company Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, at the Administrative Agent’s Office in immediately available funds not later than 11:00 a.m. on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the remaining principal installments of the relevant tranche of Loans on a pro-rata basis across such installments. The Term Loans so prepaid shall be accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a)(v) shall be paid to the Discount

Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Loans of such Lenders in accordance with their respective Pro Rata Share. The aggregate principal amount of the tranches and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the tranches of Term Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Term Loan Prepayment.

(G) To the extent not expressly provided for herein, each Discounted Term Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.05(a)(v), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the Borrower.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(a)(v), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon the Auction Agent's (or its delegate's) actual receipt during normal business hours of such notice or communication; *provided* that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next Business Day.

(I) Each of the Company Parties and the Term Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(a)(v) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.05(a)(v) as well as activities of the Auction Agent.

(J) Each Company Party shall have the right, by written notice to the Auction Agent, to revoke in full (but not in part) its offer to make a Discounted Term Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Company Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(a)(v) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).

(ii) Notwithstanding the foregoing, in the event that, on or prior to the first anniversary after the Closing Date, the Borrower (x) prepays, refinances, substitutes or replaces any Term B Loans pursuant to a Repricing Transaction (including, for avoidance of doubt, any prepayment made pursuant to Section 2.05(b)(iii) that constitutes a Repricing Transaction), or (y) effects any amendment of this Agreement resulting in a Repricing Transaction, the Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Term Lenders, (I) in the case of clause (x), a prepayment premium of 1.00% of the aggregate principal amount of the Term B Loans so prepaid, refinanced, substituted or replaced and (II) in the case of clause (y), a fee equal

to 1.00% of the aggregate principal amount of the applicable Term B Loans outstanding immediately prior to such amendment. Such amounts shall be due and payable on the date of effectiveness of such Repricing Transaction.

(b) *Mandatory.* (1) Within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(a) (commencing with the fiscal year ended March 31, 2013) and the related Compliance Certificate has been delivered pursuant to Section 6.02(a), the Borrower shall, subject to clause (b)(vii) of this Section 2.05, cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to (A) the Applicable ECF Percentage of Excess Cash Flow, if any, for the Excess Cash Flow Period covered by such financial statements minus (B) the sum of (1) all voluntary prepayments of Term Loans made during such fiscal year pursuant to Section 2.05(a)(v) or Section 10.07(l), in an amount equal to the discounted amount actually paid in respect of the principal amount of such Term Loans, during such fiscal year or, without duplication across periods, after year-end and prior to when such Excess Cash Flow prepayment is due, (2) all other voluntary prepayments of Term Loans during such fiscal year or, without duplication across periods, after year-end and prior to when such Excess Cash Flow prepayment is due and (3) all voluntary prepayments of loans under the ABL Facility during such fiscal year or, without duplication across periods, after year end and prior to when such Excess Cash Flow prepayment is due, to the extent the commitments under the ABL Facility are permanently reduced by the amount of such payments and, in the case of each of the immediately preceding clauses (1), (2) and (3), to the extent such prepayments are funded with the Internally Generated Cash and not funded with any Cure Amounts.

(ii) If (1) the Borrower or any Restricted Subsidiary of the Borrower Disposes of any property or assets (other than any Disposition of any property or assets permitted by Section 7.05(a), (b), (c), (d), (e), (g), (h), (i), (l), (m) (except as set forth in the proviso thereof and except to the extent such property is subject to a Mortgage), (n), (o), (p), (q), (s) (except as set forth in the proviso thereof) or (t), or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or Restricted Subsidiary of Net Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or any Restricted Subsidiary of such Net Proceeds, subject to clause (b)(vii) of this Section 2.05, an aggregate principal amount of Term Loans in an amount equal to 100% of all such Net Proceeds received; *provided* that if at the time that any such prepayment would be required, the Borrower is required to offer to repurchase or to prepay Permitted First Priority Refinancing Debt (or any Permitted Refinancing thereof that is secured on a pari passu basis with the Obligations) pursuant to the terms of the documentation governing such Indebtedness with the net proceeds of such Disposition or Casualty Event (such Permitted First Priority Refinancing Debt (or Permitted Refinancing thereof) required to be offered to be so repurchased or prepaid, “**Other Applicable Indebtedness**”), then the Borrower may apply such Net Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness at such time; *provided* that the portion of such Net Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such net proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such net proceeds shall be allocated to the Term Loans in accordance with the terms hereof) to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.05(b)(ii) shall be reduced accordingly; *provided, further*, that to the extent the holders of Other Applicable

Indebtedness decline to have such Other Applicable Indebtedness repurchased or prepaid, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof.

(iii) If the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness after the Closing Date (A) not permitted to be incurred or issued pursuant to Section 7.03 or (B) that is intended to constitute Credit Agreement Refinancing Indebtedness, the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(iv) [Reserved].

(v) Except with respect to Loans incurred in connection with any Refinancing Amendment, Term Loan Extension Request or any Incremental Amendment (to the extent set forth in such Refinancing Amendment, Term Loan Extension Request or Incremental Amendment), (A) each prepayment of Term Loans pursuant to this Section 2.05(b) shall be applied ratably to each Class of Term Loans then outstanding (*provided* that (i) any prepayment of Term Loans with the Net Proceeds of Credit Agreement Refinancing Indebtedness shall be applied solely to each applicable Class of Refinanced Debt, and (ii) any Class of Incremental Term Loans may specify that one or more other Classes of Term Loans and Incremental Term Loans may be prepaid prior to such Class of Incremental Term Loans); (B) with respect to each Class of Term Loans, each prepayment pursuant to clauses (i) through (iii) of this Section 2.05(b) shall be applied to the scheduled installments of principal thereof following the date of prepayment pursuant to Section 2.07 in direct order of maturity; and (C) each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares of such prepayment.

(vi) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made by the Borrower pursuant to clauses (i) through (iii) of this Section 2.05(b) at least three (3) Business Days prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment. Each Term Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to clauses (i), (ii) and (iii) of this Section 2.05(b) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m. one Business Day after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Any Declined Proceeds shall be retained by the Borrower.

(vii) *Foreign Dispositions.* Notwithstanding any other provisions of this Section 2.05, (i) to the extent that any of or all the Net Proceeds of any Disposition by a Foreign Subsidiary (“**Foreign Disposition**”) or Excess Cash Flow attributable to Foreign Subsidiaries are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05 but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all actions required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, such repatriation will be immediately effected and such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than two Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.05 and (ii) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Disposition or Foreign Subsidiary Excess Cash Flow would have material adverse tax cost consequences with respect to such Net Proceeds or Excess Cash Flow, such Net Proceeds or Excess Cash Flow so affected may be retained by the applicable Foreign Subsidiary; *provided* that, in the case of this clause (ii), on or before the date on which any such Net Proceeds so retained would otherwise have been required to be applied to reinvestments or prepayments pursuant to this Section 2.05(b) or any such Excess Cash Flow would have been required to be applied to prepayments pursuant to this Section 2.05(b), the Borrower may apply an amount equal to such Net Proceeds or Excess Cash Flow to such reinvestments or prepayments, as applicable, as if such Net Proceeds or Excess Cash Flow had been received by the Borrower rather than such Foreign Subsidiary, less the amount of additional taxes that would have been payable or reserved against if such Net Proceeds or Excess Cash Flow had been repatriated (or, if less, the Net Proceeds or Excess Cash Flow that would be calculated if received by such Foreign Subsidiary).

(viii) If the Split Brands (or any portion thereof) have not been acquired by Holdings by July 31, 2012 (the “**Split Brands Cutoff Date**”), the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to \$45,000,000, or such lesser amount as constitutes the ratable portion of such \$45,000,000 allocable as of the date of the Acquisition Agreement to the Split Brands not purchased based on a customary economic metric to be agreed with the Administrative Agent, on or prior to the date which is five (5) Business Days after the Split Brands Cutoff Date (or such later date that is the last day of the next concluding Interest Period for any Loans).

(c) *Interest, Funding Losses, Etc.* All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.05.

Notwithstanding any of the other provisions of this Section 2.05, so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under this Section 2.05, prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such Eurocurrency Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in their sole

discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

Section 2.06 Termination or Reduction of Commitments.

The Term B Commitment of each Term Lender shall be automatically and permanently reduced to \$0 upon the funding of Term B Loans to be made by it on the Closing Date.

Section 2.07 Repayment of Loans.

The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders (A) on the last Business Day of each March, June, September and December, commencing with the first full quarter after the Closing Date, an aggregate principal amount equal to 0.25% of the aggregate principal amount of all Term B Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05) and (B) on the Maturity Date for the Term B Loans, the aggregate principal amount of all Term B Loans outstanding on such date.

Section 2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate, for such Interest Period plus the Applicable Rate and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) During the continuance of a Default under Section 8.01(a), the Borrower shall pay interest on past due amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on such amounts (including interest on past due interest) shall be due and payable upon demand.

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

Section 2.09 Fees.

(a) *Other Fees.* The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

(b) *Closing Fees.* The Borrower agrees to pay on the Closing Date to each Lender party to this Agreement on the Closing Date, as fee compensation for the funding of such Lender's Term Loan, a closing fee (the "**Closing Fee**") in an amount equal to 1.50% of the stated principal amount of such Lender's Term Loan made on the Closing Date. Such Closing Fee will be in all respects fully earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter and, in the case of the Term Loans, such Closing Fee shall be netted against Term Loans made by such Lender.

Section 2.10 Computation of Interest and Fees.

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate) shall be made on the basis of a year of three hundred and sixty-five (365) days, or three hundred and sixty-six (366) days, as applicable, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Indebtedness.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Term Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Term Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) [Reserved].

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.11(a), and by each Lender in its account or accounts pursuant to Section 2.11(a), shall be *prima facie* evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12 Payments Generally.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share provided for under this Agreement) of such payment in like funds as received by wire transfer to such Lender's applicable Lending Office. All payments received by the Administrative Agent after 2:00 p.m., shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; *provided* that, if such extension would cause payment of interest on or principal of Eurocurrency Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith

on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the “**Compensation Period**”) at a rate per annum equal to the applicable Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender’s Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent’s demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent manifest error.

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

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

(f) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may (to the fullest extent permitted by mandatory provisions of applicable Law), but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender’s Pro Rata Share of the Outstanding Amount of all Loans outstanding at such time in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.13 Sharing of Payments.

If, other than as expressly provided elsewhere herein, any Lender shall obtain payment in respect of any principal or interest on account of the Loans made by it any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal or interest on such Loans or such participations, as the case may be, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For avoidance of doubt, the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.14 Incremental Credit Extensions.

(a) *Incremental Commitments.* The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (an "**Incremental Loan Request**"), request one or more new commitments which may be in the same Facility as any outstanding Term Loans (a "**Term Loan Increase**") or a new Class of term loans (collectively with any Term Loan Increase, the "**Incremental Commitments**"), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders.

(b) *Incremental Loans.* Any Incremental Term Loans effected through the establishment of new Term Loans made on an Incremental Facility Closing Date shall be designated a separate Class of Incremental Term Loans for all purposes of this Agreement. On any Incremental Facility Closing Date on which any Incremental Commitments of any Class are effected (including through any Term Loan Increase), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) each Incremental Lender of such Class shall make a Loan to the Borrower (an "**Incremental Term Loan**") in an amount equal to its Incremental Commitment

of such Class and (ii) each Incremental Lender of such Class shall become a Lender hereunder with respect to the Incremental Commitment of such Class and the Incremental Term Loans of such Class made pursuant thereto. Notwithstanding the foregoing, Incremental Term Loans may have identical terms to any of the Term Loans and be treated as the same Class as any of such Term Loans.

(c) *Incremental Loan Request.* Each Incremental Loan Request from the Borrower pursuant to this Section 2.14 shall set forth the requested amount and proposed terms of the relevant Incremental Term Loans. Incremental Term Loans may be made by any existing Lender (but each existing Lender will not have an obligation to make any Incremental Commitment, nor will the Borrower have any obligation to approach any existing lenders to provide any Incremental Commitment) or by any other bank or other financial institution (any such other bank or other financial institution being called an “**Additional Lender**”) (each such existing Lender or Additional Lender providing such, an “**Incremental Lender**”); *provided* that the Administrative Agent shall have consented (not to be unreasonably withheld or delayed) to such Lender’s or Additional Lender’s making such Incremental Term Loans to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Loans to such Lender or Additional Lender.

(d) *Effectiveness of Incremental Amendment.* The effectiveness of any Incremental Amendment, and the Incremental Commitments thereunder, shall be subject to the satisfaction on the date thereof (the “**Incremental Facility Closing Date**”) of each of the following conditions:

(i) no Default or Event of Default shall exist after giving effect to such Incremental Commitments and Incremental Loans made pursuant thereto on the Incremental Facility Closing Date;

(ii) after giving effect to such Incremental Commitments, the conditions of Section 4.02(i) shall be satisfied (it being understood that all references to “the date of such Credit Extension” or similar language in such Section 4.02(i) shall be deemed to refer to the effective date of such Incremental Amendment); *provided* that for purposes of satisfying Section 4.02(i), only the Specified Representations shall be required to be true and correct to the extent the proceeds of such Incremental Loans are used to consummate a Permitted Acquisition;

(iii) the Borrower and its Restricted Subsidiaries shall be in compliance with the covenants set forth in Section 7.11, determined on a Pro Forma Basis as of the Incremental Facility Closing Date and the last day of the most recently ended Test Period (or, if no Test Period cited in Section 7.11 has passed, the covenants in Section 7.11 for the first Test Period cited in such Section shall be satisfied as of the last four quarters ended), in each case, as if any Incremental Term Loans available under such Incremental Commitments had been outstanding on the last day of such fiscal quarter of the Borrower for testing compliance therewith;

(iv) each Incremental Term Commitment shall be in an aggregate principal amount that is not less than \$15,000,000 and shall be in an increment of \$1,000,000 (*provided* that such amount may be less than \$15,000,000 if such amount represents all remaining availability under the limit set forth in the following clause (v)); and

(v) the aggregate amount of the Incremental Term Loans shall not exceed (A) (1) \$220,000,000 minus (2) the aggregate amount of all secured Permitted Ratio Debt incurred by the Borrower and its Restricted Subsidiaries pursuant to Section 7.03(s) minus (3) the aggregate amount of incremental commitments that shall have become effective under the ABL Facility after the Closing Date and (B) an additional amount of Incremental Term Loans so long as the Consolidated First Lien Net Leverage Ratio is no more than 4.00 to 1.00 as of the last day of the most recently ended period of four fiscal quarters of the Borrower for which financial statements are internally available, determined on the applicable Incremental Facility Closing Date, after giving effect to any such incurrence on a Pro Forma Basis, and excluding from clause (x) of the definition of Consolidated First Lien Net Leverage Ratio the cash proceeds of any such Incremental Term Loans.

(e) *Required Terms.* The terms, provisions and documentation of the Incremental Term Loans and Incremental Commitments of any Class shall be as agreed between the Borrower and the applicable Incremental Lenders providing such Incremental Commitments, and except as otherwise set forth herein, to the extent not identical to the Term Loans existing on the Incremental Facility Closing Date, shall be reasonably satisfactory to Administrative Agent. In any event:

(i) the Incremental Term Loans:

(A) shall (x) rank *pari passu* in right of payment and of security with and (y) have the same Guarantees as the Term Loans,

(B) shall not mature earlier than the Latest Maturity Date of any Term Loans outstanding at the time of incurrence of such Incremental Term Loans,

(C) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of then-existing Term Loans,

(D) shall have an Applicable Rate, and subject to clauses (e)(i)(B) and (e)(i)(C) above and clause (e)(iii) below, amortization determined by the Borrower and the applicable Incremental Lenders, and

(E) the Incremental Term Loans may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments of Term Loans hereunder, as specified in the applicable Incremental Amendment;

(ii) [Reserved];

(iii) the amortization schedule (subject to clause (i)(C) above) applicable to any Incremental Loans and the All-In Yield applicable to the Incremental Term Loans of each Class shall be determined by the Borrower and the applicable new Lenders and shall be set forth in each applicable Incremental Amendment; *provided, however,* that with respect to any Loans made under Incremental Commitments, the All-In Yield applicable to such Incremental Term

Loans shall not be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to outstanding Term Loans plus 50 basis points per annum unless the Applicable Rate (together with, as provided in the proviso below, the Eurocurrency floor or Base Rate floor) with respect to the Term Loans is increased so as to cause the then applicable All-In Yield under this Agreement on each outstanding Class of Term Loans to equal the All-In Yield then applicable to the Incremental Term Loans minus 50 basis points; *provided* that any increase in All-In Yield to any existing Term Loan due to the application of a Eurocurrency floor or Base Rate floor higher than 1.25% or 2.25%, respectively, on any Incremental Term Loan shall be effected solely through an increase in (or implementation of, as applicable) any Eurocurrency floor or Base Rate floor applicable to such existing Term Loan.

(f) *Incremental Amendment.* Commitments in respect of Incremental Term Loans shall become Commitments under this Agreement pursuant to an amendment (an “**Incremental Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Incremental Lender providing such Commitments and the Administrative Agent. The Incremental Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14. The Borrower will use the proceeds of the Incremental Term Loans for any purpose not prohibited by this Agreement. No Lender shall be obligated to provide any Incremental Term Loans, unless it so agrees.

(g) [Reserved].

(h) This Section 2.14 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.15 Refinancing Amendments.

(a) On one or more occasions after the Closing Date, the Borrower may obtain, from any Lender or any Additional Refinancing Lender, Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Term Loans then outstanding under this Agreement (which for purposes of this clause (a) will be deemed to include any then outstanding Other Term Loans or Incremental Term Loans) in the form of Other Term Loans or Other Term Loan Commitments pursuant to a Refinancing Amendment.

(b) The effectiveness of any Refinancing Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) customary legal opinions, board resolutions and officers’ certificates consistent with those delivered on the Closing Date other than changes to such legal opinion resulting from a change in law, change in fact or change to counsel’s form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Credit Agreement Refinancing Indebtedness is provided with the benefit of the applicable Loan Documents.

(c) Each issuance of Credit Agreement Refinancing Indebtedness under Section 2.15(a) shall be in an aggregate principal amount that is (x) not less than \$15,000,000 and (y) an integral multiple of \$1,000,000 in excess thereof.

(d) Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to a Refinancing Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto and (ii) make such other changes to this Agreement and the other Loan Documents consistent with the provisions and intent of the third paragraph of Section 10.01 (without the consent of the Required Lenders called for therein) and (iii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Refinancing Amendment.

Section 2.16 Extension of Term Loans.

(a) *Extension of Term Loans.* The Borrower may at any time and from time to time request that all or a portion of the Term Loans of a given Class (each, an “**Existing Term Loan Tranche**”) be amended to extend the scheduled maturity date(s) with respect to all or a portion of any principal amount of such Term Loans (any such Term Loans which have been so amended, “**Extended Term Loans**”) and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Term Loans, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Term Loan Tranche) (each, a “**Term Loan Extension Request**”) setting forth the proposed terms of the Extended Term Loans to be established, which shall (x) be identical as offered to each Lender under such Existing Term Loan Tranche (including as to the proposed interest rates and fees payable) and offered pro rata to each Lender under such Existing Term Loan Tranche and (y) be identical to the Term Loans under the Existing Term Loan Tranche from which such Extended Term Loans are to be amended, except that: (i) all or any of the scheduled amortization payments of principal of the Extended Term Loans may be delayed to later dates than the scheduled amortization payments of principal of the Term Loans of such Existing Term Loan Tranche, to the extent provided in the applicable Extension Amendment; *provided, however*, that at no time shall there be Classes of Term Loans hereunder (including Refinancing Term Loans and Extended Term Loans) which have more than four (4) different Maturity Dates; (ii) the Effective Yield with respect to the Extended Term Loans (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the Effective Yield for the Term Loans of such Existing Term Loan Tranche, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Term Loans); and (iv) Extended Term Loans may have call protection as may be agreed by the Borrower and the Lenders thereof; *provided* that no Extended Term Loans may be optionally prepaid prior to the date on which all Term Loans with an earlier final stated maturity (including Term Loans under the Existing Term Loan Tranche from which they were amended) are repaid in full, unless such optional prepayment is accompanied by a pro rata optional prepayment of such other Term Loans; *provided, however*, that (A) no Default shall

have occurred and be continuing at the time a Term Loan Extension Request is delivered to Lenders, (B) in no event shall the final maturity date of any Extended Term Loans of a given Term Loan Extension Series at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Term Loans hereunder, (C) the Weighted Average Life to Maturity of any Extended Term Loans of a given Term Loan Extension Series at the time of establishment thereof shall be no shorter (other than by virtue of amortization or prepayment of such Indebtedness prior to the time of incurrence of such Extended Term Loans) than the remaining Weighted Average Life to Maturity of any Existing Term Loan Tranche, (D) any such Extended Term Loans (and the Liens securing the same) shall be permitted by the terms of the Intercreditor Agreements (to the extent any Intercreditor Agreement is then in effect), (E) all documentation in respect of such Extension Amendment shall be consistent with the foregoing and (F) any Extended Term Loans may participate on a pro rata basis or less than a pro rata basis (but not greater than a pro rata basis) in any voluntary or mandatory repayments or prepayments hereunder, in each case as specified in the respective Term Loan Extension Request. Any Extended Term Loans amended pursuant to any Term Loan Extension Request shall be designated a series (each, a “**Term Loan Extension Series**”) of Extended Term Loans for all purposes of this Agreement; *provided* that any Extended Term Loans amended from an Existing Term Loan Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Term Loan Extension Series with respect to such Existing Term Loan Tranche. Each Term Loan Extension Series of Extended Term Loans incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$35,000,000.

(b) [Reserved].

(c) *Extension Request.* The Borrower shall provide the applicable Term Loan Extension Request at least five (5) Business Days prior to the date on which Lenders under the Existing Term Loan Tranche are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.16. No Lender shall have any obligation to agree to have any of its Term Loans of any Existing Term Loan Tranche amended into Extended Term Loans pursuant to any Term Loan Extension Request. Any Lender holding a Loan under an Existing Term Loan Tranche (each, an “**Extending Term Lender**”) wishing to have all or a portion of its Term Loans under the Existing Term Loan Tranche subject to such Term Loan Extension Request amended into Extended Term Loans shall notify the Administrative Agent (each, an “**Extension Election**”) on or prior to the date specified in such Term Loan Extension Request of the amount of its Term Loans under the Existing Term Loan Tranche which it has elected to request be amended into Extended Term Loans (subject to any minimum denomination requirements imposed by the Administrative Agent). In the event that the aggregate principal amount of Term Loans under the Existing Term Loan Tranche in respect of which applicable Term Lenders shall have accepted the relevant Term Loan Extension Request exceeds the amount of Extended Term Loans requested to be extended pursuant to the Term Loan Extension Request, Term Loans subject to Extension Elections shall be amended to Extended Term Loans on a pro rata basis (subject to rounding by the Administrative Agent, which shall be conclusive) based on the aggregate principal amount of Term Loans included in each such Extension Election.

(d) *Extension Amendment.* Extended Term Loans shall be established pursuant to an

amendment (each, a “**Extension Amendment**”) to this Agreement among the Borrower, the Administrative Agent and each Extending Term Lender providing an Extended Term Loan thereunder, which shall be consistent with the provisions set forth in Section 2.16(a) above, respectively (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) legal opinions, board resolutions and officers’ certificates consistent with those delivered on the Closing Date other than changes to such legal opinion resulting from a change in law, change in fact or change to counsel’s form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that the Extended Term Loans are provided with the benefit of the applicable Loan Documents. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Term Loans incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.07 with respect to any Existing Term Loan Tranche subject to an Extension Election to reflect a reduction in the principal amount of the Term Loans thereunder in an amount equal to the aggregate principal amount of the Extended Term Loans amended pursuant to the applicable Extension (with such amount to be applied ratably to reduce scheduled repayments of such Term Loans required pursuant to Section 2.07), (iii) modify the prepayments set forth in Section 2.05 to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto, (iv) make such other changes to this Agreement and the other Loan Documents consistent with the provisions and intent of the second paragraph of Section 10.01 (without the consent of the Required Lenders called for therein) and (v) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.16, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment.

(e) No conversion of Loans pursuant to any Extension in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

ARTICLE III.
TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower (the term Borrower under Article III being deemed to include any Subsidiary for whose account a Letter of Credit is issued) or any Guarantor under any Loan Document shall be made free and clear of and without deduction for any Taxes. If the Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) if the Tax in question is an Indemnified Tax or Other Tax, the sum payable by the

Borrower or applicable Guarantor shall be increased as necessary so that after all required deductions have been made (including deductions applicable to additional sums payable under this Section 3.01), each of such Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding agent shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if the Borrower or any Guarantor is the applicable withholding agent, it shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary Taxes and any other excise, property, intangible or mortgage recording Taxes, imposed by any Governmental Authority, which arise from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document excluding, in each case, any such Tax imposed as a result of an Agent or Lender's Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments under any Loan Document (collectively, "**Assignment Taxes**") (except for Assignment Taxes resulting from an assignment, participation, etc., that is requested or required in writing by Borrower), but only to the extent such Assignment Taxes are imposed as a result of a connection between the assignor, assignee, participating lender or Participant (as applicable) and the jurisdiction imposing such Assignment Taxes (other than any connection arising solely from executing, delivering, being a party to, engaging in any transaction pursuant to, performing obligations under, receiving payments under, and/or enforcing, any Loan Document) (all such non-excluded Taxes described in this Section 3.01(b) being hereinafter referred to as "**Other Taxes**").

(c) Without duplication of any amounts paid or to be paid pursuant to Section 3.01(a), the Borrower and each Guarantor agree to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes imposed on or with respect to any amounts paid by or on account of the Borrower or any Guarantor under any Loan Document and Other Taxes payable by such Agent or such Lender and (ii) any expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by such Agent or Lender (or by an Agent on behalf of such Lender), accompanied by a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts shall be conclusive absent manifest error.

(d) Each Lender and Agent shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender and Agent shall, whenever a lapse in time or change in circumstances renders such documentation obsolete, invalid or inaccurate in any material respect, deliver promptly and on or before the date such documentation expires, becomes obsolete, invalid or inaccurate to the Borrower and the Administrative Agent updated or other appropriate

documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its inability to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding Tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding any other provision of this clause (d), a Lender shall not be required to deliver any documentation pursuant to this clause (d) that such Lender is not legally eligible to deliver. Without limiting the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from federal backup withholding.

(ii) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (A) a certificate substantially in the form of Exhibit I hereto (any such certificate a “**United States Tax Compliance Certificate**”) and (B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN (or any successor forms), or

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Lender that has transferred its beneficial interest to a Participant or SPC), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (*provided* that, if the Lender is a partnership and not a participating Lender (or Lender transferring to an SPC) and one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owner(s)).

(iii) Each Agent that is a United States person (as defined in Section 7701(a)(30)) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of Internal Revenue Service Form W-9 with respect to fees received on its own behalf, certifying that such Agent is exempt from U.S. federal backup withholding. Each Agent that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI with respect to fees received on its own behalf.

(e) If a payment made to any Person under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Person were to fail to comply with the applicable reporting requirements of FATCA, such Person shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Laws and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Laws and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Person has or has not complied with such Person's obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment.

(f) Any Lender or Agent claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to mitigate or reduce the additional amounts payable, which reasonable efforts may include a change in the jurisdiction of its Lending Office (or any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise disadvantageous to such Lender.

(g) If any Lender or Agent determines, in its sole discretion, that it has received a refund in respect of any Indemnified Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by a Loan Party pursuant to this Section 3.01, it shall promptly remit such refund to such Loan Party (but only to the extent of indemnification or additional amounts paid by the Loan Party under this Section 3.01 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of the Lender or Agent, as the case may be, and without interest (other than any interest paid by the relevant taxing authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); *provided* that the Loan Parties, upon the request of the Lender or Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant taxing authority) to such party in the event such party is required to repay such refund to the relevant taxing authority. This Section shall not be construed to require any Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other person.

Section 3.02 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based

upon the Eurocurrency Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurocurrency Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.05. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.03 Inability to Determine Rates.

If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the applicable Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan, or that the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, or that Dollar deposits are not being offered to banks in the London interbank eurodollar, or other applicable, market for the applicable amount and the Interest Period of such Eurocurrency Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of such Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request, if applicable, into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy; Eurocurrency Rate Loan Reserves.

(a) If any Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the Closing Date, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Eurocurrency Rate Loans, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from (i)(x) any Indemnified Taxes or Other Taxes indemnified pursuant to Section 3.01, (y) any Taxes excluded from the definition of Indemnified Taxes (other than Taxes excluded under clause (ii) thereof) or Other Taxes or (z) any Taxes that are not imposed on or in respect of its loans, loan principal, interest or other payments, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or (ii) reserve requirements contemplated by Section 3.04(c)) and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining the Eurocurrency Rate Loan (or of maintaining its obligations to make any Loan), or to reduce the amount of any sum received or receivable by

such Lender, then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction. Notwithstanding anything herein to the contrary, for all purposes under this Agreement (including Section 3.04(b)), (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in Law, regardless of the date enacted, adopted or issued.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof, in each case after the Closing Date, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction within fifteen (15) days after receipt of such demand.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each applicable Eurocurrency Rate Loan of the Borrower equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurocurrency Rate Loans of the Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation.

(e) If any Lender requests compensation under this Section 3.04, then such Lender

will, if requested by the Borrower, use commercially reasonable efforts to designate another Lending Office for any Loan or Letter of Credit affected by such event; *provided* that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage, and *provided, further*, that nothing in this Section 3.04(e) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.04(a), (b), (c) or (d).

Section 3.05 Funding Losses.

Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurocurrency Rate Loan of the Borrower on a day other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurocurrency Rate Loan of the Borrower on the date or in the amount notified by the Borrower;

including any loss or expense (excluding loss of anticipated profits) arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

Section 3.06 Matters Applicable to All Requests for Compensation.

(a) Any Agent or any Lender claiming compensation under this Article III shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.01, 3.02, 3.03 or 3.04, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another applicable Eurocurrency Rate Loan, or, if applicable, to convert Base Rate Loans into Eurocurrency Rate Loan, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(c) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue any Eurocurrency Rate Loan, or to convert Base Rate Loans into Eurocurrency Rate Loans shall be suspended pursuant to Section 3.06(b) hereof, such Lender's applicable Eurocurrency Rate Loans shall be automatically converted into Base Rate Loans (or, if such conversion is not possible, repaid) on the last day(s) of the then current Interest Period(s) for such Eurocurrency Rate Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurocurrency Rate Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurocurrency Rate Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurocurrency Rate Loans shall be made or continued instead as Base Rate Loans (if possible), and all Base Rate Loans of such Lender that would otherwise be converted into Eurocurrency Rate Loans shall remain as Base Rate Loans.

(d) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of any of such Lender's Eurocurrency Rate Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurocurrency Rate Loans made by other Lenders under the applicable Facility are outstanding, if applicable, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurocurrency Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurocurrency Rate Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

Section 3.07 Replacement of Lenders under Certain Circumstances.

(a) If at any time (i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 or 3.04 as a result of any condition described in such Sections or any Lender ceases to make any Eurocurrency Rate Loans as a result of any condition described in Section 3.02 or Section 3.04 or (ii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on ten (10) Business Days' prior written notice to the Administrative Agent and such Lender, (x) replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.07(b) (with the assignment fee to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement (in respect of any applicable Facility only in the case of clause (i) or, with respect to a Class vote, clause (ii)) to one or more Eligible Assignees; *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; and *provided, further*, that (A) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments and (B) in the case

of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of, the applicable departure, waiver or amendment of the Loan Documents; or (y) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date; *provided* that in the case of any such termination of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable departure, waiver or amendment of the Loan Documents and such termination shall be in respect of any applicable facility only in the case of clause (i) or, with respect to a Class vote, clause (ii).

(b) Any Lender being replaced pursuant to Section 3.07(a) above shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's applicable Commitment and outstanding Loans in respect thereof, and (ii) deliver any Term Notes evidencing such Loans to the Borrower or Administrative Agent. Pursuant to such Assignment and Assumption, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitment and outstanding Loans, (B) all obligations of the Borrower owing to the assigning Lender relating to the Loans, Commitments and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Assumption and (C) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Term Note or Term Notes executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. In connection with any such replacement, if any such Non-Consenting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption to such Non-Consenting Lender, then such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Non-Consenting Lender.

(c) [Reserved].

(d) In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each affected Lender or each Lender of a Class in accordance with the terms of Section 10.01 or all the Lenders with respect to a certain Class of the Loans and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all affected Lenders of a certain Class, the Required Class Lenders) have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**Non-Consenting Lender.**"

Section 3.08 Survival.

All of the Loan Parties' obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01 Conditions to Initial Credit Extension.

The obligation of each Lender to make a Credit Extension hereunder on the Closing Date is subject to satisfaction of the following conditions precedent, except as otherwise agreed between the Borrower and the Administrative Agent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or pdf copies or other facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party each in form and substance reasonably satisfactory to the Administrative Agent and its legal counsel:

(i) a Committed Loan Notice in accordance with the requirements hereof;

(ii) executed counterparts of this Agreement;

(iii) a Term Note executed by the Borrower in favor of each Lender that has requested a Term Note at least two (2) Business Days in advance of the Closing Date;

(iv) each Collateral Document set forth in Section 1.01C of the Confidential Disclosure Letter required to be executed on the Closing Date as indicated on such schedule, duly executed by each Loan Party thereto, together with:

(A) certificates, if any, representing the Pledged Equity referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank; and

(B) evidence that all other actions, recordings and filings required by the Collateral Documents that the Administrative Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been taken, completed or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent;

(v) such certificates of good standing (to the extent such concept exists) from the applicable secretary of state of the state of organization of each Loan Party, certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection

with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(vi) an opinion from Kirkland & Ellis LLP, New York counsel to the Loan Parties, substantially in the form of Exhibit N;

(vii) [reserved];

(viii) a solvency certificate from the chief financial officer, chief accounting officer or other officer with equivalent duties of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit D-2;

(ix) certified copies of the Acquisition Agreement and schedules thereto, duly executed by the parties thereto, together with all material agreements, instruments and other documents delivered in connection therewith as the Administrative Agent shall reasonably request, each including certification by a Responsible Officer of the Borrower that such documents are in full force and effect as of the Closing Date and that the condition specified in clause (c) below has been satisfied; and

(x) copies of a recent Lien and judgment search in each jurisdiction reasonably requested by the Administrative Agent with respect to the Loan Parties;

provided, however, that, each of the requirements set forth in clause (iv) above, including the delivery of documents and instruments necessary to satisfy the Collateral and Guarantee Requirement (except for the execution and delivery of the Security Agreement and to the extent that a Lien on such Collateral may be perfected (x) by the filing of a financing statement under the Uniform Commercial Code or (y) by the delivery of stock certificates of the Borrower and its wholly owned Material Domestic Subsidiaries other than any Unrestricted Subsidiaries) shall not constitute conditions precedent to any Credit Extension on the Closing Date after the Borrower's use of commercially reasonable efforts to provide such items on or prior to the Closing Date or without undue burden or expense if the Borrower agrees to deliver, or cause to be delivered, such search results, documents and instruments, or take or cause to be taken such other actions as may be required to perfect such security interests within ninety (90) days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion).

(b) All fees and expenses required to be paid hereunder and invoiced at least three (3) Business Days before the Closing Date (except as otherwise reasonably agreed to by the Borrower) shall have been paid from the proceeds of the initial fundings under the Facilities, including fees pursuant to the Fee Letter.

(c) Prior to or substantially simultaneously with the initial Borrowing on the Closing Date, (i) the Acquisition shall have been consummated in all material respects in accordance with the terms of the Acquisition Agreement as in effect on December 20,

2011 (without giving effect to any amendments, consents or waivers by Holdings that are material and adverse to the Lenders or the Arrangers (as reasonably determined by the Arrangers) without the prior consent of the Arrangers (such consent not to be unreasonably withheld, delayed or conditioned) (it being understood that (a) any reduction in the purchase price of, or consideration for, the Acquisition is not material and adverse to the interests of the Lenders or the Arrangers, but shall reduce the commitments in respect of the Term Loans and the unsecured bridge loans (if any) (or Senior Notes) to be incurred or issued on the Closing Date, ratably and (b) any amendment to the definition of "Material Adverse Change" or "Material Adverse Effect" in such Acquisition Agreement is material and adverse to the interests of the Lenders and the Arrangers) and (ii) the Refinancing shall have been consummated.

(d) No Material Adverse Change (as defined in the Acquisition Agreement as in effect on December 20, 2011) shall have occurred which is not capable of remedy prior to the Closing Date.

(e) The Specified Representations shall be true and correct in all material respects (or, if qualified by "materiality," "Material Adverse Effect" or similar language, in all respects (after giving effect to such qualification)) on and as of the Closing Date; *provided* that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date.

(f) The Arrangers shall have received the Company Annual Financial Statements, the Company Quarterly Financial Statements, the Acquired Business Annual Financial Statements and the Acquired Business Unaudited Financial Statements.

(g) The Arrangers shall have received the Pro Forma Financial Statements.

(h) The Administrative Agent and each Arranger shall have received all documentation and other information about the Borrower and the Guarantors as has been reasonably requested in writing at least 15 days prior to the Closing Date by the Administrative Agent or such Arranger that it reasonably determines is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA Patriot Act.

(i) The representations and warranties made by the Seller in the Acquisition Agreement that are material to the interests of the Lenders shall be true and correct, but only to the extent that Holdings or the Borrower has the right to terminate its obligations under the Acquisition Agreement as a result of a breach of such representations and warranties.

Without limiting the generality of the provisions of Section 9.03(b), for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received

notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02 Conditions to All Credit Extensions after the Closing Date.

The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

- (i) The representations and warranties of each Loan Party set forth in Article V and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided* that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.
- (ii) No Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds therefrom.
- (iii) The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(i) and (ii) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES

Holdings, the Borrower and each of the Subsidiary Guarantors party hereto represent and warrant to the Agents and the Lenders at the time of each Credit Extension (to the extent required to be true and correct for such Credit Extension pursuant to Article IV) that:

Section 5.01 Existence, Qualification and Power; Compliance with Laws.

Each Loan Party and each Restricted Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization to the extent such concept exists in such jurisdiction, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business as currently conducted and (ii) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs and

injunctions and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case, referred to in clause (a) (other than with respect to the Borrower), (b)(i) (other than with respect to the Borrower), (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.

Section 5.03 Governmental Authorization; Other Consents.

No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

Section 5.04 Binding Effect.

This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by (i) Debtor Relief Laws and by general principles of equity and (ii) the need for

filings and registrations necessary to create or perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (iii) the effect of foreign Laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

Section 5.05 Financial Statements; No Material Adverse Effect.

(a) The Company Annual Financial Statements and the Company Quarterly Financial Statements fairly present in all material respects the financial condition of Holdings and its Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, (A) except as otherwise expressly noted therein and (B) subject, in the case of the Company Quarterly Financial Statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(b) The Acquired Business Annual Financial Statements and the Acquired Business Unaudited Financial Statements fairly present in all material respects the financial condition of the Acquired Business as of the dates thereof and its results of operations for the period covered thereby in accordance with IFRS consistently applied throughout the periods covered thereby, (A) except as otherwise expressly noted therein and (B) subject, in the case of the Acquired Business Unaudited Financial Statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(c) The unaudited *pro forma* consolidated balance sheet of Holdings and its Subsidiaries as of the last day of the twelve-month period ending on the last day of the most recently completed four-fiscal quarter period ended at least forty-five (45) days (or ninety (90) days if such four-fiscal quarter period is the end of Holdings' fiscal year) prior to the Closing Date, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (including the notes thereto) (the "**Pro Forma Balance Sheet**") and the unaudited *pro forma* consolidated statement of income of Holdings and its Subsidiaries for the 12 -month period ended at least forty-five (45) days (or ninety (90) days if such four-fiscal quarter period is the end of the Borrower's fiscal year) prior to the Closing Date, prepared after giving effect to the Transactions as if the Transactions had occurred at the beginning of such period (together with the Pro Forma Balance Sheet, the "**Pro Forma Financial Statements**"), copies of which have heretofore been furnished to the Administrative Agent, have been prepared based on the Company Annual Financial Statements, the Company Quarterly Financial Statements, the Acquired Business Annual Financial Statements and the Acquired Business Unaudited Financial Statements and have been prepared in good faith, based on assumptions believed by Holdings to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a *pro forma* basis the estimated financial position of Holdings and its Subsidiaries as at September 30, 2011 and their estimated results of operations for the period covered thereby.

(d) The forecasts of consolidated balance sheets, income statements and cash flow statements of Holdings and its Subsidiaries for each fiscal year ending after the Closing Date until the fifth anniversary of the Closing Date, copies of which have been furnished to the Administrative Agent prior to the Closing Date, and all Projections delivered pursuant to Section 6.01 have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made, it being understood that projections as to future events are not to be viewed as facts and actual results may vary materially

from such forecasts.

(e) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(f) There are no material liabilities that are not disclosed in the Company Annual Financial Statements, the Company Quarterly Financial Statements, the Acquired Business Annual Financial Statements, the Acquired Business Unaudited Financial Statements or any other financial statements delivered pursuant to Section 6.01(a) or (b).

Section 5.06 Litigation.

Except as set forth in Section 5.06 of the Confidential Disclosure Letter, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of Holdings or the Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings, the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.07 Ownership of Property; Liens.

Holdings, the Borrower and each of its Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all Real Property necessary in the ordinary conduct of its business, free and clear of all Liens except as set forth in Section 5.07 of the Confidential Disclosure Letter and except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.08 Environmental Matters.

Except as specifically disclosed in Section 5.08(a) of the Confidential Disclosure Letter or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) Each Loan Party and its respective properties and operations are and have been in material compliance with all Environmental Laws, which includes obtaining and maintaining all applicable Environmental Permits required under such Environmental Laws to carry on the business of the Loan Parties;

(b) the Loan Parties have not received any written notice that alleges any of them is in violation of or potentially liable under any Environmental Laws and none of the Loan Parties nor any of the Real Property is the subject of any claims, investigations, liens, demands, or judicial, administrative or arbitral proceedings pending or, to the knowledge of the Borrower, threatened in writing, under any Environmental Law or to

revoke or modify any Environmental Permit held by any of the Loan Parties;

(c) there has been no Release of Hazardous Materials on, at, under or from any Real Property or facilities owned, operated or leased by any of the Loan Parties, or, to the knowledge of the Borrower, Real Property formerly owned, operated or leased by any Loan Party or arising out of the conduct of the Loan Parties that could reasonably be expected to require investigation, remedial activity or corrective action or cleanup or could reasonably be expected to result in the Borrower incurring liability under Environmental Laws; and

(d) there are no facts, circumstances or conditions arising out of or relating to the operations of the Loan Parties or Real Property or facilities owned, operated or leased by any of the Loan Parties or the knowledge of the Borrower, Real Property or facilities formerly owned, operated or leased by the Loan Parties that could reasonably be expected to result in the Borrower incurring liability under Environmental Laws.

Section 5.09 Taxes.

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Loan Parties and their Subsidiaries have timely filed all Tax returns required to be filed, and have paid all Taxes levied or imposed upon them or their properties, income, profits or assets, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Parties against the Loan Parties that, if made would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 5.10 ERISA Compliance.

(a) Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws.

(b) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither any Loan Party, Restricted Subsidiary nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due under Section 4007 of ERISA); (iii) neither any Loan Party, Restricted Subsidiary nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (iv) neither any Loan Party, Restricted Subsidiary nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA; except, with respect to each of the foregoing clauses of this Section 5.10(b), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.11 Subsidiaries; Equity Interests.

As of the Closing Date (after giving effect to the Transactions), no Loan Party has any material Subsidiaries other than those specifically disclosed in Section 5.11 of the Confidential Disclosure Letter, and all of the outstanding Equity Interests owned by the Loan Parties (or a Subsidiary of any Loan Party) in such material Subsidiaries have been validly issued and are fully paid and all Equity Interests owned by a Loan Party (or a Subsidiary of any Loan Party) in such material Subsidiaries are owned free and clear of all Liens except (i) those created under the Collateral Documents or under the ABL Facility Documentation (which Liens shall be subject to the ABL Intercreditor Agreement) and (ii) any Lien that is permitted under Section 7.01. As of the Closing Date, Schedules 1(a) and 5(a) to the Perfection Certificate (a) set forth the name and jurisdiction of each Domestic Subsidiary that is a Loan Party, (b) set forth the ownership interest of the Borrower and any other Subsidiary thereof in each Subsidiary, including the percentage of such ownership and (c) identifies each Subsidiary that is a Subsidiary the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral and Guarantee Requirement.

Section 5.12 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings or drawings under any Letter of Credit will be used for any purpose that violates Regulation U of the Board of Governors of the United States Federal Reserve System.

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

Section 5.13 Disclosure.

No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, *pro forma* financial information and information of a general economic or industry nature) to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading. With respect to projected financial information and *pro forma* financial information, Holdings and the Borrower represent that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

Section 5.14 Labor Matters.

Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of the Borrower or any of its Restricted Subsidiaries

have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with such matters; and (c) all payments due from each of the Loan Parties or any of the Restricted Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party.

Section 5.15 Intellectual Property; Licenses, Etc. Each of the Loan Parties and the Restricted Subsidiaries own, license or possess the right to use all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, technology, software, know-how database rights, design rights and other intellectual property rights (collectively, “**IP Rights**”) that are reasonably necessary for the operation of their respective businesses as currently conducted, and, such IP Rights do not conflict with the rights of any Person, except to the extent the absence of such IP Rights and such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the knowledge of Holdings and the Borrower, no IP Rights used by any Loan Party or any of the Restricted Subsidiaries in the operation of their respective businesses as currently conducted infringes upon any rights held by any Person, except for such infringements, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the IP Rights owned by any Loan Party or any of the Restricted Subsidiaries, is pending or, to the knowledge of Holdings and the Borrower, threatened against any Loan Party or any of the Restricted Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

All registrations listed in Schedule 12(a) or 12(b) to the Perfection Certificate are valid and in full force and effect, except, in each case, to the extent the failure of such registrations to be valid and in full force and effect could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.16 Solvency.

On the Closing Date, after giving effect to the Transactions, the Borrower and its Restricted Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 Subordination of Junior Financing.

The Obligations are “Senior Debt,” “Senior Indebtedness,” “Guarantor Senior Debt” or “Senior Secured Financing” (or any comparable term) under, and as defined in, any Junior Financing Documentation that is subordinated in right of payment to the Obligations.

Section 5.18 USA Patriot Act.

(a) To the extent applicable, each of Holdings and its Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the USA Patriot Act.

(b) No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party,

candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 5.19 Security Documents.

Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to Administrative Agent of any Pledged Debt and any Pledged Equity required to be delivered pursuant to the applicable Collateral Documents), are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties, except as otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a legal, valid, enforceable and perfected first priority (other than with respect to the ABL Priority Collateral (as to which the Lien hereon shall be junior to the extent set forth in the ABL Intercreditor Agreement)) Lien on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.19) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest (other than with respect to those pledges and security interests made under the Laws of the jurisdiction of formation of the applicable Foreign Subsidiary) in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Closing Date and until required pursuant to Section 6.13 or 4.01(a)(iv), the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.01(a)(iv).

ARTICLE VI.
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than obligations under Term Loan Secured Hedge Agreements) hereunder which is accrued and payable shall remain unpaid or unsatisfied, then from and after the Closing Date, Holdings and the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of the Restricted Subsidiaries to:

Section 6.01 Financial Statements.

(a) Deliver to the Administrative Agent for prompt further distribution to each Lender, not later than the earlier of (x) ninety (90) days after the end of each fiscal year of the Borrower (beginning with the fiscal year ending March 31, 2012) and (y) the day on which Holdings' Annual Report on Form 10-K is required to be filed with the SEC for such fiscal year, a consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal year, and

the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of PricewaterhouseCoopers LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) Deliver to the Administrative Agent for prompt further distribution to each Lender, not later than the earlier of (x) forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (beginning with the fiscal quarter ended December 31, 2011) and (y) the day on which Holdings' Quarterly Report on Form 10-Q is required to be filed with the SEC for the applicable fiscal quarter, a consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal quarter and the related (i) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (ii) consolidated statements of cash flows for such fiscal quarter and the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of Borrower as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) Deliver to the Administrative Agent for prompt further distribution to each Lender, within ninety (90) days after the end of each fiscal year of Borrower, a detailed consolidated budget for the following fiscal year on a quarterly basis (including a projected consolidated balance sheet of Borrower and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flow and projected income and a summary of the material underlying assumptions applicable thereto) (collectively, the "**Projections**"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood that actual results may vary from such Projections and that such variations may be material; and

(d) Deliver to the Administrative Agent with each set of consolidated financial statements referred to in Sections 6.01(a) and 6.01(b) above, the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (A) the applicable financial statements of the Borrower (or any direct or indirect parent of the Borrower) or (B) the Borrower's (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to clauses (A) and (B), (i) to the extent such information relates to a parent of

the Borrower, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Borrower (or such parent), on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a standalone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are accompanied by a report and opinion of PricewaterhouseCoopers LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit.

Any financial statement required to be delivered pursuant to Section 6.01(a) or (b) shall not be required to include purchase accounting adjustments relating to the Transactions to the extent it is not practicable to include them.

Documents required to be delivered pursuant to Section 6.01 and Section 6.02(b) and (c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower (or any direct or indirect parent of the Borrower) posts such documents, or provides a link thereto on the website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (x) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (y) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent (which may be electronic copies delivered via electronic mail). Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC"

shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.08); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and the Arranger shall treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

Section 6.02 Certificates; Other Information.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) days after the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of Holdings;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which Holdings, the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(c) promptly after the furnishing thereof, copies of any material notices received by any Loan Party (other than in the ordinary course of business) or material statements or material reports furnished to any holder of debt securities (other than in connection with any board observer rights) of any Loan Party or of any of its Restricted Subsidiaries pursuant to the terms of the ABL Facility Documentation, the Senior Notes Indenture or the Existing Notes Indenture and, in each case, any Permitted Refinancing thereof in each case in a principal amount in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to any other clause of this Section 6.02;

(d) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i) in the case of annual Compliance Certificates only, a report setting forth the information required by sections describing the legal name and the jurisdiction of formation of each Loan Party and the location of the chief executive office of each Loan Party of the Perfection Certificate or confirming that there has been no change in such information since the Closing Date or the date of the last such report, (ii) a description of each event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a mandatory prepayment under Section 2.05(b)

and (iii) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate (to the extent that there have been any changes in the identity or status as a Restricted Subsidiary or Unrestricted Subsidiary of any such Subsidiaries since the Closing Date or the most recent list provided); and

(e) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Restricted Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

Section 6.03 Notices.

Promptly after a Responsible Officer of the Borrower or any Subsidiary Guarantor has obtained knowledge thereof, notify the Administrative Agent:

- (a) of the occurrence of any Default;
- (b) of the occurrence of an ERISA Event which could reasonably be expected to result in a Material Adverse Effect; and
- (c) of the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority against the Borrower or any of its Restricted Subsidiaries that could reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b) or (c) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Taxes.

Pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP or (b) the failure to pay or discharge the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.05 Preservation of Existence, Etc. Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization, and

- (b) take all reasonable action to maintain all rights, privileges (including its good

standing where applicable in the relevant jurisdiction), permits, licenses and franchises necessary or desirable in the normal conduct of its business,

except, in the case of (a) (other than with respect to Holdings and the Borrower) or (b), to the extent (i) that failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) pursuant to any merger, consolidation, liquidation, dissolution or Disposition permitted by Article VII.

Section 6.06 Maintenance of Properties.

Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted.

Section 6.07 Maintenance of Insurance.

Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as Holdings, the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons. Each such policy of insurance shall as appropriate (i) name the Administrative Agent, on behalf of the Lenders, as an additional insured thereunder as its interest may appear or (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement that names the Administrative Agent, on behalf of the Lenders, as loss payee thereunder. If the improvements on any Mortgaged Property are at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then, to the extent required by applicable Flood Insurance Laws, the Borrower shall, or shall cause each Loan Party to, (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount reasonably satisfactory to the Administrative Agent and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

Section 6.08 Compliance with Laws.

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.09 Books and Records.

Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP and which reflect all material financial transactions and matters involving the assets and business of Holdings, the Borrower or a Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year and only one (1) such time shall be at the Borrower's expense; *provided, further*, that during the continuation of an Event of Default, the Administrative Agent (or any of its respective representatives or independent contractors), on behalf of the Lenders, may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 6.10, none of the Borrower or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.11 Additional Collateral; Additional Guarantors.

At the Borrower's expense, subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon the formation or acquisition of any new direct or indirect wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by any Loan Party or the designation in accordance with Section 6.14 of any existing direct or indirect wholly owned Material Domestic Subsidiary as a Restricted Subsidiary (in each case, other than an Excluded Subsidiary) or any Subsidiary becoming a wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary):

(i) within 60 days after such formation, acquisition or designation, or such longer period as the Administrative Agent may agree in writing in its discretion:

(A) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Administrative Agent, other than with respect to any Excluded Assets, joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, a counterpart of the Intercompany Note and other security agreements and documents as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent (consistent with the Mortgages, Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Closing Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(B) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement (and the parent of each such Domestic Subsidiary that is a Guarantor) to deliver any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) take and cause such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement and each direct or indirect parent of such Material Domestic Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC financing statements and delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and perfected Liens to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) if reasonably requested by the Administrative Agent, within forty-five (45) days after such request (or such longer period as the Administrative Agent may agree in writing in its discretion), deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties to the Administrative Agent as to such matters set forth in this Section 6.11(a) as the Administrative Agent may reasonably request;

(iii) as promptly as practicable after the request therefor by the Administrative Agent, deliver to the Administrative Agent with respect to each

Material Real Property, any existing title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided, however*, that there shall be no obligation to deliver to the Administrative Agent any existing environmental assessment report whose disclosure to the Administrative Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained; and

(iv) if reasonably requested by the Administrative Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in writing in its discretion), deliver to the Administrative Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to perfection and existence of security interests with respect to property of any Guarantor acquired after the Closing Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (b) below.

(b) Not later than one hundred twenty (120) days after the acquisition by any Loan Party of Material Real Property as determined by the Borrower (acting reasonably and in good faith) (or such longer period as the Administrative Agent may agree in writing in its discretion) that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement, which property would not be automatically subject to another Lien pursuant to pre-existing Collateral Documents, cause such property to be subject to a Lien and Mortgage in favor of the Administrative Agent for the benefit of the Secured Parties and take, or cause the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of, the Collateral and Guarantee Requirement and to otherwise comply with the requirements of the definition of "Collateral and Guarantee Requirement".

Section 6.12 Compliance with Environmental Laws.

Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent the Loan Parties are required by Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 6.13 Further Assurances.

Promptly upon reasonable request by the Administrative Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do,

execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents, to the extent required pursuant to the Collateral and Guarantee Requirement. If the Administrative Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of any Mortgaged Property, the Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA. The Borrower shall promptly notify the Administrative Agent upon the purchase of the Split Brands or the termination of Holdings' obligation to purchase the Split Brands. To the extent that the Split Brands are purchased prior to the Split Brands Cutoff Date: (i) either (x) such purchase must be made by the Borrower or a Subsidiary Guarantor, or (y) upon the purchase of the Split Brands by Holdings, Holdings shall contribute the Split Brands to the Borrower or a Subsidiary Guarantor and (ii) the Borrower shall take all such actions required by Section 6.11 to create and perfect the security interest in the Split Brands and comply with the Collateral and Guarantee Requirement. Holdings shall take all actions necessary to consummate the BSPA Assignment.

Section 6.14 Designation of Subsidiaries.

The Borrower may at any time after the Closing Date designate any Restricted Subsidiary of the Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) other than for purposes of designating a Restricted Subsidiary as an Unrestricted Subsidiary that is a Securitization Subsidiary in connection with the establishment of a Qualified Securitization Financing, immediately after giving effect to such designation, the Borrower shall be in compliance, on a Pro Forma Basis, with the covenants set forth in Section 7.11 (it being understood that if no Test Period cited in Section 7.11 has passed, the covenants in Section 7.11 for the first Test Period cited in such Section shall be satisfied as of the last four quarters ended and, as a condition precedent to the effectiveness of any such designation, the Borrower shall deliver to the Administrative Agent a certificate setting forth in reasonable detail the calculations demonstrating such compliance), (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if, after such designation, it would be a "Restricted Subsidiary" for the purpose of the ABL Facility, the Senior Notes, Existing Notes or any Junior Financing and (iv) no Restricted Subsidiary may be designated an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary. The designation of any Subsidiary as an Unrestricted Subsidiary after the Closing Date shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value as determined in good faith by the Borrower of the Borrower's or its Subsidiary's (as applicable) Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value as determined in good faith by the Borrower at the date of such designation of the Borrower's or its Subsidiary's (as applicable) Investment in such Subsidiary.

Section 6.15 Maintenance of Ratings.

Use commercially reasonable efforts to maintain (i) a public corporate credit rating (but not any specific rating) from S&P and a public corporate family rating (but not any specific rating) from Moody's, in each case in respect of the Borrower, and (ii) a public rating (but not any specific rating) in respect of the Term B Loans from each of S&P and Moody's.

ARTICLE VII.
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Term Loan Secured Hedge Agreements) which is accrued and payable shall remain unpaid or unsatisfied, then from and after the Closing Date, Holdings and the Borrower (and, with respect to Section 7.14 only, Holdings) shall not and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

Section 7.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens created pursuant to any Loan Document (including Liens pursuant to the Loan Documents securing the Existing Notes);
- (b) Liens existing on the Closing Date and listed in Section 7.01(b) of the Confidential Disclosure Letter and any modifications, replacements, renewals, refinancings or extensions thereof; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof, and (ii) the replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 7.03;
- (c) Liens for taxes, assessments or governmental charges that are not overdue for a period of more than thirty (30) days or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (d) statutory or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, so long as, in each case, such Liens secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security

legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any of its Restricted Subsidiaries;

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

(g) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries, taken as a whole, and any exceptions on the Mortgage Policies issued in connection with the Mortgaged Properties;

(h) Liens securing judgments or orders for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which (i) do not interfere in any material respect with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) do not secure any Indebtedness or (iii) are permitted by Section 7.05;

(j) Liens (i) in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or (ii) on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-208 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institutions general terms and conditions;

(l) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Sections 7.02(g), (i) and (n) or, to the extent related to any of the foregoing, Section 7.02(r) to be applied against the purchase

price for such Investment, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens (i) in favor of the Borrower or a Restricted Subsidiary on assets of a Restricted Subsidiary that is not a Loan Party securing Indebtedness permitted under Section 7.03(b), (d) and (u) and (ii) in favor of the Borrower or any Subsidiary Guarantor;

(n) any interest or title of a lessor, sublessor, licensor or sublicensor under leases, subleases, licenses or sublicenses entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

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

(p) Liens deemed to exist in connection with Investments in repurchase agreements under Section 7.02;

(q) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(r) Liens that are contractual rights of set-off or rights of pledge (i) relating to the establishment of depository relations with banks or other deposit-taking financial institutions and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(s) Liens solely on any cash earnest money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(t) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located;

(u) Liens to secure Indebtedness permitted under Section 7.03(e); *provided* that (i) such Liens are created within 270 days of the acquisition, construction, repair, lease or improvement of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits and (iii) with respect to Capitalized

Leases, such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to such Capitalized Leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross-collateralized to other financings of equipment provided by such lender;

(v) Liens on property of any Subsidiary that is not a Loan Party, which Liens secure Indebtedness of any of Holdings, the Borrower or any Subsidiary permitted under Section 7.03;

(w) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 6.14), in each case after the Closing Date (other than Liens on the Equity Interests of any Person that becomes a Restricted Subsidiary); *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) the Indebtedness secured thereby is permitted under Section 7.03(g);

(x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(y) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings;

(z) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(aa) the modification, replacement, renewal or extension of any Lien permitted by clauses (b), (u) and (w) of this Section 7.01; *provided* that (i) the Lien does not extend to any additional property, other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien and (B) proceeds and products thereof, and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03 (to the extent constituting Indebtedness);

(bb) Liens with respect to property or assets of the Borrower or any of its

Restricted Subsidiaries securing obligations in an aggregate principal amount outstanding at any time not to exceed the greater of \$30,000,000 and 1.50% of Total Assets, in each case determined as of the date of incurrence;

(cc) Liens to secure Indebtedness permitted under Section 7.03(s) to the extent such Liens are subject to (i) the ABL Intercreditor Agreement and a First Lien Intercreditor Agreement if such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Obligations, or (ii) the ABL Intercreditor Agreement and a Junior Lien Intercreditor Agreement if such Indebtedness is secured by the Collateral on a second priority (or other junior priority) basis to the liens securing the Obligations;

(dd) Liens on the Collateral securing obligations in respect of Permitted First Priority Refinancing Debt or Permitted Junior Priority Refinancing Debt and any Permitted Refinancing of any of the foregoing; *provided* that (x) any such Liens securing any Permitted Refinancing in respect of Permitted First Priority Refinancing Debt are subject to the ABL Intercreditor Agreement and the First Lien Intercreditor Agreement and (y) any such Liens securing any Permitted Refinancing in respect of Permitted Junior Priority Refinancing Debt are subject to the ABL Intercreditor Agreement and the Junior Lien Intercreditor Agreement;

(ee) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(ff) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(gg) Liens on the Securitization Assets arising in connection with a Qualified Securitization Financing; and

(hh) Liens on the Collateral securing Indebtedness permitted under Section 7.03(r) (including, for the avoidance of doubt, any Liens securing obligations referred to in clauses (ii) and (iii) of the definition of "ABL Facility Indebtedness"); *provided*, that such Liens shall be subject to the ABL Intercreditor Agreement in the capacity as "ABL Obligations" or subject to the Replacement Intercreditor Agreement.

Section 7.02 Investments.

Make or hold any Investments, except:

- (a) Investments by the Borrower or any of its Restricted Subsidiaries in assets that were Cash Equivalents when such Investment was made;
- (b) loans or advances to officers, directors and employees of any Loan Party

(or any direct or indirect parent thereof) or any of its Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of Holdings or any direct or indirect parent thereof; *provided* that, to the extent such loans or advances are made in cash, the amount of such loans and advances used to acquire such Equity Interests shall be contributed to the Borrower in cash as common equity and (iii) for any other purposes not described in the foregoing clauses (i) and (ii); *provided* that the aggregate principal amount outstanding at any time under clause (iii) above shall not exceed \$10,000,000;

(c) Investments (i) by the Borrower or any Restricted Subsidiary in any Loan Party (other than Holdings), (ii) by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party and (iii) by any Loan Party in any Restricted Subsidiary that is not a Loan Party; *provided* that (A) any such Investments made pursuant to this clause (iii) in the form of intercompany loans shall be evidenced by notes that, unless they are Excluded Assets, have been pledged (individually or pursuant to a global note) to the Administrative Agent for the benefit of the Lenders (it being understood and agreed that any Investments permitted under this clause (iii) that are not so evidenced as of the Closing Date are not required to be so evidenced and pledged until the date that is sixty (60) days after the Closing Date (or such later date as may be approved by the Administrative Agent)) and (B) the aggregate amount of Investments made pursuant to this clause (iii) shall not exceed at any time outstanding the sum of (x) together with Investments pursuant to Section 7.02(i)(iv)(1), the greater of \$75,000,000 and 3.25% of Total Assets and (y) the Cumulative Credit at such time;

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

(e) Investments (excluding loans and advances made in lieu of Restricted Payments pursuant to and limited by Section 7.02(m) below) consisting of transactions permitted under Sections 7.01, 7.03 (other than 7.03(c) and (d)), 7.04 (other than 7.04(c)(ii) or (e)), 7.05 (other than 7.05(e)), 7.06 (other than 7.06(d) or (h)(iv)) and 7.13, respectively;

(f) Investments (i) existing or contemplated on the Closing Date or made pursuant to legally binding written contracts in existence on the Closing Date, in each case set forth in Section 7.02(f) of the Confidential Disclosure Letter and any modification, replacement, renewal, reinvestment or extension thereof that does not in each case increase the amount of such Investment and (ii) existing on the Closing Date by the Borrower or any Restricted Subsidiary in the Borrower or any other Restricted Subsidiary and any modification, renewal or extension thereof;

(g) Investments in Swap Contracts permitted under Section 7.03;

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

(i) any acquisition of all or substantially all the assets of a Person or any Equity Interests in a Person that becomes a Restricted Subsidiary or division or line of business of a Person (or any subsequent Investment made in a Person, division or line of business previously acquired in a Permitted Acquisition), in a single transaction or series of related transactions, if immediately after giving Pro Forma Effect thereto (i) no Event of Default shall have occurred and be continuing, (ii) Holdings, the Borrower and the Restricted Subsidiaries shall be in Pro Forma Compliance with the covenants set forth in Section 7.11; (iii) to the extent required by the Collateral and Guarantee Requirement, (A) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral and (B) any such newly created or acquired Subsidiary (other than an Excluded Subsidiary or an Unrestricted Subsidiary) shall become Guarantors, in each case, in accordance with Section 6.11, and (iv) the aggregate amount of Investments made by virtue of this Section 7.02(i) in Persons that do not become Loan Parties shall not exceed at any time outstanding the sum of (1) together with Investments pursuant to Section 7.02(c)(iii)(B)(x), the greater of \$75,000,000 and 3.25% of Total Assets and (2) the Cumulative Credit at such time (any such acquisition, a **“Permitted Acquisition”**);

(j) Investments made in connection with the Transactions;

(k) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) loans and advances to any direct or indirect parent of the Borrower not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made to such parent in accordance with Sections 7.06(f), (g) or (h), such Investment being treated for purposes of the applicable clause of Section 7.06, including any limitations, as if a Restricted Payment made pursuant to such clause;

(n) Investments in an aggregate amount outstanding pursuant to this clause (n) (valued at the time of the making thereof, and without giving effect to any write downs or write offs thereof) at any time not to exceed (x) the greater of \$90,000,000 and 4.00% of Total Assets (in each case, net of any return in respect thereof, including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) plus (y) the Cumulative Credit at such time;

(o) advances of payroll payments to employees in the ordinary course of

business;

(p) (i) Investments made in the ordinary course of business in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors in the ordinary course of business and (ii) Investments to the extent that payment for such Investments is made solely with Equity Interests of the Borrower (or any direct or indirect parent of the Borrower);

(q) Investments of a Restricted Subsidiary acquired after the Closing Date or of a corporation merged or amalgamated or consolidated into the Borrower or merged, amalgamated or consolidated with a Restricted Subsidiary in accordance with Section 7.04 after the Closing Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(r) Investments made by any Restricted Subsidiary that is not a Loan Party to the extent such Investments are financed with the proceeds received by such Restricted Subsidiary from an Investment in such Restricted Subsidiary permitted under this Section 7.02;

(s) Guarantees by the Borrower or any of its Restricted Subsidiaries of leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(t) (i) Investments in a Securitization Subsidiary or any Investment by a Securitization Subsidiary in any other Person in connection with a Qualified Securitization Financing; *provided, however*, that any such Investment in a Securitization Subsidiary is in the form of (x) a contribution of additional Securitization Assets or (y) Limited Originator Recourse and (ii) distributions or payments of Securitization Fees and purchases of Securitization Assets pursuant to a Securitization Repurchase Obligation in connection with a Qualified Securitization Financing;

(u) the acquisition of the Split Brands pursuant to the Split Brands Acquisition Agreement as in effect on the Closing Date or as may be amended in any manner not material and adverse to the Lenders;

(v) Investments consisting of any Foreign IP Transfer; and

(w) Investments made with Excluded Contributions.

Section 7.03 Indebtedness.

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

(a) Indebtedness of any Loan Party under the Loan Documents;

(b) (i) Indebtedness outstanding on the Closing Date and listed in Section 7.03(b) of the Confidential Disclosure Letter and any Permitted Refinancing thereof and (ii) intercompany Indebtedness outstanding on the Closing Date and any Permitted Refinancing thereof, of which any amount owed by a Restricted Subsidiary that is not a Loan Party to a Loan Party shall be evidenced by an Intercompany Note; *provided* that all such Indebtedness of any Loan Party owed to any Person or Restricted Subsidiary that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to an Intercompany Note;

(c) Guarantees by the Borrower and any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary of the Borrower otherwise permitted hereunder; *provided* that (A) no Guarantee by any Restricted Subsidiary of any Indebtedness constituting a Specified Junior Financing Obligation shall be permitted unless such Guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein and (B) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(d) Indebtedness of the Borrower or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or issued or transferred to any direct or indirect parent of a Loan Party which is substantially contemporaneously transferred to a Loan Party or any Restricted Subsidiary of a Loan Party) to the extent constituting an Investment permitted by Section 7.02; *provided* that all such Indebtedness of any Loan Party owed to any Person or Restricted Subsidiary that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to an Intercompany Note;

(e) (i) Attributable Indebtedness and other Indebtedness (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred by the Borrower or any Restricted Subsidiary prior to or within 270 days after the acquisition, lease or improvement of the applicable asset and any Permitted Refinancing thereof in an aggregate amount not to exceed the greater of \$35,000,000 and 2.00% of Total Assets, in each case determined at the time of incurrence (together with any Permitted Refinancings thereof) at any time outstanding and (ii) Attributable Indebtedness arising out of sale-leaseback transactions permitted by Section 7.05(m) and any Permitted Refinancing of such Attributable Indebtedness;

(f) Indebtedness in respect of Swap Contracts designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes and Guarantees thereof;

(g) Indebtedness of the Borrower or any Restricted Subsidiary assumed in connection with any Permitted Acquisition; *provided* that such Indebtedness is not incurred in contemplation of such Permitted Acquisition, and any Permitted Refinancing

thereof; *provided further* that, after giving *pro forma* effect to such Permitted Acquisition and the assumption of such Indebtedness, the aggregate amount of such Indebtedness does not exceed (x) \$25,000,000 at any time outstanding plus (y) any additional amount of such Indebtedness so long as the Total Leverage Ratio is no greater than 5.25:1.00 and, if such Indebtedness is secured, the Secured Leverage Ratio is no greater than 4.00:1.00, in each case determined on a Pro Forma Basis; *provided* that in the case of clause (y), any such Indebtedness incurred by a Restricted Subsidiary that is not a Loan Party, together with any Indebtedness incurred by a Restricted Subsidiary that is not a Loan Party pursuant to Section 7.03(s), does not exceed in the aggregate at any time outstanding the greater of \$35,000,000 and 2.00% of Total Assets, in each case determined at the time of incurrence;

(h) Indebtedness representing deferred compensation to employees of the Borrower or any of its Restricted Subsidiaries incurred in the ordinary course of business;

(i) Indebtedness consisting of promissory notes issued by the Borrower or any of its Restricted Subsidiaries to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower or any direct or indirect parent of the Borrower permitted by Section 7.06;

(j) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earnouts) or other similar adjustments;

(k) Indebtedness consisting of obligations of the Borrower or any of its Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions, and Permitted Acquisitions or any other Investment expressly permitted hereunder;

(l) Cash Management Obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business and any Guarantees thereof;

(m) Indebtedness in an aggregate principal amount that at the time of, and after giving effect to, the incurrence thereof, would not exceed the greater of \$90,000,000 and 4.00% of Total Assets; *provided* that the aggregate principal amount of Indebtedness outstanding in reliance on this clause (m) in respect of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party shall not exceed in the aggregate at any time outstanding the greater of \$35,000,000 and 2.00% of Total Assets, in each case determined at the time of incurrence;

(n) Indebtedness consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(o) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(p) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(q) Indebtedness in respect of the Senior Notes and the Existing Notes (including, in each case, any guarantees thereof) and, in each case, any Permitted Refinancing thereof;

(r) ABL Facility Indebtedness of the Loan Parties (a) under clause (i) of the definition of ABL Facility Indebtedness in an aggregate principal amount at any time outstanding not to exceed the greater of (i) the Maximum ABL Facility Amount and (ii) the Borrowing Base and (b) under clauses (ii) and (iii) of the definition of ABL Facility Indebtedness;

(s) Permitted Ratio Debt and any Permitted Refinancing thereof;

(t) Credit Agreement Refinancing Indebtedness;

(u) Indebtedness incurred by a Foreign Subsidiary which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (u) and then outstanding, does not exceed \$15,000,000;

(v) Indebtedness incurred by a Securitization Subsidiary in a Qualified Securitization Financing that is not recourse (except for Standard Securitization Undertakings and Limited Originator Recourse) to the Borrower or any of the Restricted Subsidiaries; and

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

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such

extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including OID) incurred in connection with such refinancing.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

Section 7.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions), except that:

(a) any Restricted Subsidiary may merge, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that the Borrower shall be the continuing or surviving Person or (ii) one or more other Restricted Subsidiaries; *provided* that when any Person that is a Loan Party is merging with a Restricted Subsidiary, a Loan Party shall be the continuing or surviving Person;

(b) (i) any Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is not a Loan Party, (ii) any Subsidiary may liquidate or dissolve and (iii) any Subsidiary may change its legal form if, with respect to clauses (ii) and (iii), the Borrower determines in good faith that such action is in the best interest of the Borrower and its Subsidiaries and is not materially disadvantageous to the Lenders (it being understood that in the case of any change in legal form, a Subsidiary that is a Guarantor will remain a Guarantor unless such Guarantor is otherwise permitted to cease being a Guarantor hereunder);

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Guarantor, then (i) the transferee must be a Guarantor (other than Holdings) or the Borrower or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in or Indebtedness of a Restricted Subsidiary which is not a Loan Party in accordance with Sections 7.02 (other than Section 7.02(e)) and 7.03, respectively; and

(d) so long as no Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the “**Successor Company**”), (A) the Successor Company shall be an entity organized or existing under the Laws of the United States, any state thereof or the District of Columbia, (B) the Successor Company shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Company’s obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that its obligations thereunder shall apply to the Successor Company’s obligations under the Loan Documents, (E) if requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Administrative Agent) confirmed that its obligations thereunder shall apply to the Successor Company’s obligations under the Loan Documents, and (F) the Borrower shall have delivered to the Administrative Agent an officer’s certificate and an opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided, further*, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, the Borrower under this Agreement;

(e) so long as no Default has occurred and is continuing or would result therefrom (in the case of a merger involving a Loan Party), any Restricted Subsidiary may merge or consolidate with any other Person in order to effect an Investment permitted pursuant to Section 7.02; *provided* that the continuing or surviving Person shall be a Restricted Subsidiary of the Borrower, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement;

(f) Holdings, the Borrower and the Restricted Subsidiaries may consummate the Acquisition, related transactions contemplated by the Acquisition Agreement (and documents related thereto) and the Transactions; and

(g) so long as no Default has occurred and is continuing or would result therefrom, a merger, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05.

Section 7.05 Dispositions.

Make any Disposition or enter into any agreement to make any Disposition (other than as part of or in connection with the Transactions), except:

- (a) Dispositions of obsolete, worn out, used or surplus property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful in the conduct of the business of the Borrower or any of its Restricted Subsidiaries;
- (b) Dispositions of inventory, goods held for sale in the ordinary course of business and immaterial assets (including allowing any registrations or any applications for registration of any IP Rights to lapse or go abandoned) in the ordinary course of business;
- (c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;
- (d) Dispositions of property to the Borrower or any Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party, (i) the transferee thereof must be a Loan Party (other than Holdings) or (ii) if such transaction constitutes an Investment, such transaction is permitted under Section 7.02;
- (e) to the extent constituting Dispositions, transactions permitted by Sections 7.01, 7.02 (other than Section 7.02(e)), 7.04 (other than Section 7.04(g)) and 7.06 (other than 7.06(d));
- (f) [Reserved];
- (g) Dispositions of Cash Equivalents;
- (h) (i) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business or which do not materially interfere with the business of the Borrower or any of its Restricted Subsidiaries, (ii) Dispositions of IP Rights that do not materially interfere with the business of the Borrower or any of its Restricted Subsidiaries and (iii) any Foreign IP Transfer;
- (i) transfers of property subject to Casualty Events;
- (j) Dispositions of property; *provided* that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default has occurred and is continuing), no Default shall have occurred and been continuing or would result from such Disposition, (ii) with respect to any Disposition pursuant to this clause (j) for a purchase price in excess of \$12,500,000 the Borrower or any of its Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Sections 7.01(a), (f), (k), (l), (p), (q), (r)(i), (r)(ii), (s) and (dd) (only to the extent the Obligations are secured by such cash and Cash Equivalents)); *provided*,

however, that for the purposes of this clause (j)(ii), the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by the Borrower or the applicable Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of the applicable Disposition, and (C) aggregate non-cash consideration received by the Borrower or the applicable Restricted Subsidiary having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed the greater of \$35,000,000 and 2.00% of Total Assets at any time (net of any non-cash consideration converted into cash and Cash Equivalents) and (iii) to the extent the aggregate amount of Net Proceeds received by the Borrower or a Restricted Subsidiary from Dispositions made pursuant to this Section 7.05(j) in the aggregate exceeds \$75,000,000 in any fiscal year, with unused amounts in any fiscal year being carried over to the next succeeding fiscal year only (*provided* that if any such amount is carried over, it will be deemed used in the applicable subsequent fiscal year only after the amount available in such subsequent fiscal year has been fully used), plus any amount available pursuant to this clause (iii) in the next succeeding fiscal year only (which amount will be permanently reduced if used in the current fiscal year) subject to a maximum of \$150,000,000 in any fiscal year, all Net Proceeds in excess of such amount in such fiscal year shall be applied to prepay Term Loans in accordance with Section 2.05(b)(ii) and may not be reinvested in the business of the Borrower or a Restricted Subsidiary;

(k) [Reserved];

(l) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business;

(m) Dispositions of property pursuant to sale-leaseback transactions; *provided* that to the extent the aggregate Net Proceeds from all such Dispositions since the Closing Date exceeds \$75,000,000, such excess may be reinvested in accordance with the definition of "Net Proceeds" or otherwise applied to prepay Term Loans in accordance with Section 2.05(b)(ii);

(n) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater value or usefulness to the business of the Borrower and its Subsidiaries as a whole, as determined in good faith by the management of the Borrower;

(o) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(p) Dispositions of Investments in joint ventures to the extent required by, or

made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the unwinding of any Swap Contract;

(r) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial IP Rights;

(s) any Disposition of Securitization Assets to a Securitization Subsidiary; *provided* that to the extent the aggregate Net Proceeds from all such Dispositions since the Closing Date exceeds \$75,000,000, such excess shall be applied to prepay Term Loans in accordance with Section 2.05(b)(ii) and may not be reinvested in the business of the Borrower or a Restricted Subsidiary; and

(t) the issuance of Nominal Shares.

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(e), (i), (p), (q), (r) and (s) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition as determined by the Borrower in good faith. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 7.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower, and other Restricted Subsidiaries of the Borrower (and, in the case of such a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests (other than Disqualified Equity Interests not otherwise permitted by Section 7.03) of such Person (and, in the case of such a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(c) Restricted Payments made (i) on the Closing Date to consummate the Transactions, (ii) in respect of working capital adjustments or purchase price adjustments pursuant to the Acquisition Agreement or the Split Brands Acquisition Agreement and

(iii) in order to satisfy indemnity and other similar obligations under the Acquisition Agreement or the Split Brands Acquisition Agreement;

(d) to the extent constituting Restricted Payments, the Borrower (or any direct or indirect parent thereof) and its Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 7.02 (other than 7.02(e) and (m)), 7.04 or 7.08 (other than Section 7.08(f) or 7.08(l));

(e) repurchases of Equity Interests in Holdings, the Borrower or any Restricted Subsidiary of Holdings deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(f) the Borrower and each Restricted Subsidiary may (i) pay (or make Restricted Payments to allow Holdings or any other direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of such Restricted Subsidiary (or of the Borrower or any other such direct or indirect parent thereof) held by any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Subsidiaries or (ii) make Restricted Payments in the form of distributions to allow Holdings or any direct or indirect parent of Holdings to pay principal or interest on promissory notes that were issued to any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such Equity Interests held by such Persons, in each case, upon the death, disability, retirement or termination of employment of any such Person or pursuant to any employee, manager or director equity plan, employee, manager or director stock option plan or any other employee, manager or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, officer or consultant of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Restricted Subsidiaries; *provided* that the aggregate amount of Restricted Payments made pursuant to this clause (f) together with the aggregate amount of loans and advances to Holdings made pursuant to Section 7.02(m) in lieu of Restricted Payments permitted by this clause (f) shall not exceed \$20,000,000 in any calendar year (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$40,000,000 in any calendar year); *provided further* that such amount in any calendar year may further be increased by an amount not to exceed:

(A) amounts used to increase the Cumulative Credit pursuant to clauses (b) and (c) of the definition of "Cumulative Credit";

(B) the Net Proceeds of key man life insurance policies received by the Borrower or its Restricted Subsidiaries less the amount of Restricted

Payments previously made with the cash proceeds of such key man life insurance policies;

and *provided further* that cancellation of Indebtedness owing to the Borrower from members of management of the Borrower, any of the Borrower's direct or indirect parent companies or any of the Borrower's Restricted Subsidiaries in connection with a repurchase of Equity Interests of any of the Borrower's direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(g) the Borrower may make Restricted Payments in an aggregate amount not to exceed, when combined with prepayment of Indebtedness pursuant to Section 7.13(a)(iv), (x) \$50,000,000, plus (y) if (A) the Total Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 4.75 to 1.00 and (B) the Secured Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 3.75 to 1.00, the Cumulative Credit at such time; *provided*, that with respect to any Restricted Payment made pursuant to clause (y) above, no Default has occurred and is continuing or would result therefrom;

(h) the Borrower may make Restricted Payments to any direct or indirect parent of the Borrower:

(ii) to pay its operating costs and expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries, Transaction Expenses and any reasonable and customary indemnification claims made by directors or officers of such parent attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

(iii) the proceeds of which shall be used to pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) franchise taxes, and other fees and expenses, required to maintain its (or any of its direct or indirect parents') corporate existence;

(iv) for any taxable period in which the Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of Borrower is the common parent (a "**Tax Group**"), to pay federal, foreign, state and local income taxes of such Tax Group that are attributable to the taxable income of the Borrower and/or its Subsidiaries; *provided* that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that the Borrower and its Subsidiaries would have been required to pay as a stand-alone Tax Group; *provided further* that the permitted payment pursuant to this clause (iii) with respect to any Taxes of any Unrestricted Subsidiary for any taxable period shall be limited to the amount actually paid with respect to such period by such Unrestricted Subsidiary to the Borrower or its Restricted Subsidiaries for the purposes of paying such consolidated, combined or similar

income Taxes;

(v) to finance any Investment that would be permitted to be made pursuant to Section 7.02 and Section 7.08 if such parent were subject to such sections; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or the Restricted Subsidiaries or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into the Borrower or its Restricted Subsidiaries in order to consummate such Permitted Acquisition or Investment, in each case, in accordance with the requirements of Section 6.11;

(vi) the proceeds of which (A) shall be used to pay customary salary, bonus and other benefits payable to officers and employees of Holdings or any direct or indirect parent company of Holdings to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries or (B) shall be used to make payments permitted under Sections 7.08 (i) and (p) (but only to the extent such payments have not been and are not expected to be made by the Borrower or a Restricted Subsidiary); and

(vii) the proceeds of which shall be used by Holdings to pay (or to make Restricted Payments to allow any direct or indirect parent thereof to pay) fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering by Holdings (or any direct or indirect parent thereof) that is directly attributable to the operations of the Borrower and its Restricted Subsidiaries;

(i) payments made or expected to be made by Holdings, the Borrower or any of the Restricted Subsidiaries in respect of withholding or similar Taxes payable by or with respect to any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) and any repurchases of Equity Interests in consideration of such payments including deemed repurchases, in each case, in connection with the exercise of stock options;

(j) Holdings, the Borrower or any of the Restricted Subsidiaries may pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof, or any Permitted Acquisition, or any vesting of Equity Interests; and

(k) Restricted Payments in the amount of any Excluded Contribution.

Section 7.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business reasonably related, complementary, synergistic or ancillary thereto (including related,

complementary, synergistic or ancillary technologies) or reasonable extensions thereof.

Section 7.08 Transactions with Affiliates.

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

- (a) transactions among Holdings and its Restricted Subsidiaries,
- (b) on terms substantially as favorable to Holdings or such Restricted Subsidiary as would be obtainable by Holdings or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate,
- (c) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions,
- (d) [reserved],
- (e) [reserved],
- (f) Restricted Payments permitted under Section 7.06,
- (g) transactions by Holdings and its Restricted Subsidiaries permitted under an express provision (including any exceptions thereto) of this Article VII,
- (h) employment and severance arrangements between Holdings and its Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and arrangements in the ordinary course of business,
- (i) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants of the Borrower and its Restricted Subsidiaries (or any direct or indirect parent of the Borrower) in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries,
- (j) transactions pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth in Section 7.08 of the Confidential Disclosure Letter or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect,
- (k) [reserved],
- (l) payments by the Borrower or any of its Subsidiaries pursuant to any tax sharing agreements with any direct or indirect parent of the Borrower to the extent attributable to the ownership or operation of the Borrower and the Subsidiaries, but only

to the extent permitted by Section 7.06(h)(iii),

(m) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of Holdings to any former, current or future director, manager, officer, employee or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees or Affiliate of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof,

(n) transactions with customers, clients, joint venture partners, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the board of directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party,

(o) any payments required to be made pursuant to the Acquisition Agreement or the Split Brands Acquisition Agreement,

(p) the payment of reasonable out-of-pocket costs and expenses and indemnities pursuant to the stockholders agreement or the registration and participation rights agreement entered into on the Closing Date in connection therewith,

(q) transactions in which Holdings or any of the Restricted Subsidiaries, as the case may be, deliver to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to Holdings or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this Section 7.08,

(r) payments to or from, and transactions with, joint ventures (to the extent any such joint venture is only an Affiliate as a result of Investments by Holdings and the Restricted Subsidiaries in such joint venture) in the ordinary course of business to the extent otherwise permitted under Section 7.02,

(s) [reserved], and

(t) any Disposition of Securitization Assets or related assets, Investment permitted pursuant to Section 7.02(t) or Standard Securitization Undertakings, in each case in connection with any Qualified Securitization Financing.

Section 7.09 Burdensome Agreements.

Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of

(a) any Restricted Subsidiary of the Borrower that is not a Guarantor to make Restricted Payments to the Borrower or any Guarantor or

(b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the Facilities and the Obligations or under the Loan Documents; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which

(i) (x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 7.09) are listed in Section 7.09 of the Confidential Disclosure Letter and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation,

(ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Borrower; *provided, further*, that this clause (ii) shall not apply to Contractual Obligations that are binding on a Person that becomes a Restricted Subsidiary pursuant to Section 6.14,

(iii) represent Indebtedness of a Restricted Subsidiary of the Borrower which is not a Loan Party which is permitted by Section 7.03 and which does not apply to any Loan Party,

(iv) are customary restrictions that arise in connection with (x) any Lien permitted by Sections 7.01(a), (k), (l), (p), (q), (r)(i), (r)(ii), (s) and (ee) and relate to the property subject to such Lien or (y) arise in connection with any Disposition permitted by Section 7.04 or 7.05 and relate solely to the assets or Person subject to such Disposition,

(v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 7.02 and applicable solely to such joint venture entered into in the ordinary course of business,

(vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to (i) the property financed by such Indebtedness and the proceeds and products thereof or (ii) the property secured by such Indebtedness and the proceeds and products thereof so long as the agreements governing such Indebtedness permit the Liens securing the Obligations,

(vii) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the property interest, rights or the assets subject thereto,

(viii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03(e), (g), (n) (a), and (u) and to the extent that such restrictions apply only to the property or assets securing such Indebtedness or, in the case of Section 7.03(g), to the Restricted Subsidiaries incurring or guaranteeing such Indebtedness,

(ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary,

(x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business,

(xi) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business,

(xii) arise in connection with cash or other deposits permitted under Sections 7.01 and 7.02 and limited to such cash or deposit, and

(xiii) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Closing Date and permitted under Section 7.03 (including, without limitation, the ABL Credit Agreement, the Senior Notes, the Existing Notes and, in each case, any Permitted Refinancing in respect thereof) that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for Indebtedness of such type (and, in any event, are no more restrictive than the restrictions contained in this Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder.

Section 7.10 Use of Proceeds.

Use the proceeds of any Borrowing, whether directly or indirectly (a) on the Closing Date, in a manner inconsistent with the uses set forth in the preliminary statements to this Agreement or (b) after the Closing Date, use the proceeds for any purpose other than to pay costs and expenses related to the Transactions and for general corporate purposes and working capital needs.

Section 7.11 Financial Covenants.

(a) *Total Leverage Ratio.* Permit the Total Leverage Ratio as of the last day of any Test Period to be greater than the ratio set forth below opposite the last fiscal quarter of such Test Period:

Fiscal Year Ending	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
March 31, 2013	7.75:1.00	7.60:1.00	7.50:1.00	7.25:1.00
March 31, 2014	7.10:1.00	7.00:1.00	6.75:1.00	6.50:1.00
March 31, 2015	6.00:1.00	5.75:1.00	5.50:1.00	5.25:1.00
March 31, 2016	4.75:1.00	4.50:1.00	4.25:1.00	4.00:1.00
March 31, 2017 and thereafter	3.50:1.00	3.50:1.00	3.50:1.00	3.50:1.00

(b) *Consolidated Cash Interest Coverage Ratio.* Permit the Consolidated Cash Interest Coverage Ratio as of the last day of any Test Period to be less than the ratio set forth below opposite the last fiscal quarter of such Test Period:

Fiscal Year Ending	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
March 31, 2013	1.50:1.00	1.50:1.00	1.50:1.00	1.50:1.00
March 31, 2014	1.60:1.00	1.60:1.00	1.70:1.00	1.70:1.00
March 31, 2015	2.00:1.00	2.00:1.00	2.00:1.00	2.00:1.00
March 31, 2016	2.25:1.00	2.25:1.00	2.25:1.00	2.25:1.00
March 31, 2017 and thereafter	2.50:1.00	2.50:1.00	2.50:1.00	2.50:1.00

Section 7.12 Accounting Changes.

Make any change in its fiscal year; *provided, however*, that Holdings may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 7.13 Prepayments, Etc. of Certain Indebtedness.

(a) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled principal, interest and mandatory prepayments shall be permitted) any subordinated Indebtedness incurred under Section 7.03, or any other Indebtedness for borrowed money of a Loan Party that is subordinated to the Obligations expressly by its terms (other than Indebtedness among the Borrower and its Restricted Subsidiaries), any Senior Notes, any unsecured Permitted Ratio Debt or any Permitted Refinancing of any Senior Notes or any unsecured Permitted Ratio Debt (collectively, "**Junior Financing**"), except (i) the refinancing thereof with any Indebtedness (to the extent such Indebtedness constitutes a Permitted Refinancing and, if such Indebtedness was originally incurred under Section 7.03(g), is permitted pursuant to Section 7.03(g)), to the extent not required to prepay any Loans pursuant to Section 2.05(b), (ii) the conversion or exchange of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parents, (iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary and (iv) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an aggregate amount not to exceed, when combined with the amount of Restricted Payments pursuant to Section 7.06(g), \$50,000,000 plus if (A) the Total Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 4.75 to 1.00 and (B) the Secured

Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 3.75 to 1.00, the Cumulative Credit at such time.

(b) Amend, modify or change in any manner materially adverse to the interests of the Lenders any term or condition of any Junior Financing Documentation in respect of any Junior Financing having an aggregate outstanding principal amount in excess of the Threshold Amount without the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed).

Section 7.14 Permitted Activities.

With respect to Holdings, engage in any material operating or business activities; *provided* that the following and any activities incidental thereto shall be permitted in any event: (i) its ownership of the Equity Interests of Borrower and activities incidental thereto, including payment of dividends and other amounts in respect of its Equity Interests, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) the performance of its obligations with respect to the Loan Documents and any other Indebtedness, (iv) any public offering of its common stock or any other issuance or sale of its Equity Interests, (v) financing activities, including the issuance of securities, incurrence of debt, payment of dividends, making contributions to the capital of the Borrower and guaranteeing the obligations of the Borrower, (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower, (vii) holding any cash or property (but not operating any property), (viii) providing indemnification to officers and directors and (ix) any activities incidental to the foregoing. Holdings shall not incur any Liens on Equity Interests of the Borrower other than those for the benefit of the Obligations, the obligations under the ABL Facility, Permitted First Priority Refinancing Debt, Permitted Junior Priority Refinancing Debt, secured Permitted Ratio Debt and the Pari Passu Obligations.

ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default.

Any of the following from and after the Closing Date shall constitute an event of default (an “**Event of Default**”):

(a) *Non-Payment.* Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants.* Holdings, the Borrower, any Restricted Subsidiary or, in the case of Section 7.14, Holdings only, fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a) or 6.05(a) (solely with respect to the Borrower) or Article VII; *provided* that the covenants in Section 7.11 are subject to cure pursuant to Section 8.04; or

(c) *Other Defaults.* Holdings, the Borrower or any Restricted Subsidiary

fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

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

(e) *Cross-Default.* Any Loan Party or any Restricted Subsidiary (A) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount of not less than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any default thereunder by any Loan Party), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that this clause (e)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder; *provided, further*, that such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02; or

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

(g) *Attachment.* Any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Borrower and the Restricted Subsidiaries, taken as a whole, and is not released, vacated or fully

bonded within sixty (60) days after its issue or levy; or

(h) *Judgments.* There is entered against any Loan Party or any Restricted Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *Invalidity of Loan Documents.* Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document or the validity or priority of a Lien as required by the Collateral Documents on a material portion of the Collateral; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Loan Document; or

(j) *Change of Control.* There occurs any Change of Control; or

(k) *Collateral Documents.* Any Collateral Document after delivery thereof pursuant to Section 4.01, 6.11 or 6.13 shall for any reason (other than pursuant to the terms thereof including as a result of a transaction not prohibited under this Agreement) cease to create a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, (i) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file Uniform Commercial Code continuation statements and (ii) except as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

(l) *ERISA.* (i) An ERISA Event occurs which has resulted or could reasonably be expected to result in liability of a Loan Party or a Restricted Subsidiary in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect, or (ii) a Loan Party, any Restricted Subsidiary or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect.

Section 8.02 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

- (i) [Reserved];
- (ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;
- (iii) [Reserved]; and
- (iv) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States or any Debtor Relief Laws, the obligation of each Lender to make Loans shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

Section 8.03 Application of Funds

Subject to the ABL Intercreditor Agreement, after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and any fees, premiums and scheduled periodic payments due under Term Loan Secured Hedge Agreements, ratably among the Secured Parties in

proportion to the respective amounts described in this clause *Third* payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and any breakage, termination or other payments under Term Loan Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Fourth* held by them;

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Section 8.04 Borrower's Right to Cure.

Notwithstanding anything to the contrary contained in Section 8.01 or Section 8.02:

(a) For the purpose of determining whether an Event of Default under Section 7.11 has occurred, the Borrower may on one or more occasions designate any portion of the net cash proceeds from a sale or issuance of Qualified Equity Interests of Holdings or any cash contribution to the common capital of the Borrower (the "**Cure Amount**") as an increase to Consolidated EBITDA for the applicable fiscal quarter; *provided* that such amounts to be designated (i) are actually received by the Borrower after the first day of such applicable fiscal quarter and on or prior to the tenth (10th) Business Day after the date on which financial statements are required to be delivered with respect to such applicable fiscal quarter (the "**Cure Expiration Date**"), (ii) do not exceed the aggregate amount necessary to cure any Event of Default under Section 7.11 as of such date and (iii) Borrower shall have provided notice (the "**Notice of Intent to Cure**") to the Administrative Agent on the date such amounts are designated as a "**Cure Amount**" (it being understood that to the extent such notice is provided in advance of delivery of a Compliance Certificate for the applicable period, the amount of such Net Proceeds that is designated as the Cure Amount may be lower than specified in such notice to the extent that the amount necessary to cure any Event of Default under Section 7.11 is less than the full amount of such originally designated amount). The Cure Amount used to calculate Consolidated EBITDA for one fiscal quarter shall be used and included when calculating Consolidated EBITDA for each Test Period that includes such fiscal quarter.

(b) The parties hereby acknowledge that this Section 8.04 may not be relied on for purposes of calculating any financial ratios other than for determining actual compliance with Section 7.11 (and not Pro Forma Compliance with Section 7.11 that is required by any other provision of this Agreement) and shall not result in any adjustment to any amounts (including the amount of Indebtedness and shall not be included for purposes of determining pricing, mandatory prepayments and the availability or amount permitted pursuant to any covenant under Article VII) with respect to the quarter with respect to which such Cure Amount was made other than the amount of the Consolidated

EBITDA referred to in the immediately preceding sentence.

(c) In furtherance of clause (a) above, (A) upon actual receipt and designation of the Cure Amount by the Borrower, the covenants under Section 7.11 shall be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with the covenants under such Section 7.11 and any Event of Default under Section 7.11 shall be deemed not to have occurred for purposes of the Loan Documents, and (B) upon receipt by the Administrative Agent of a Notice of Intent to Cure prior the Cure Expiration Date, neither the Administrative Agent nor any Lender may exercise any rights or remedies under Section 8.02 (or under any other Loan Document) on the basis of any actual or purported Event of Default under Section 7.11 until and unless the Cure Expiration Date has occurred without the Cure Amount having been received and designated.

(d) (i) In each period of four consecutive fiscal quarters, there shall be at least two (2) fiscal quarters in which no cure right set forth in this Section 8.04 is exercised and (ii) there shall be no *pro forma* reduction in Indebtedness with the Cure Amount for determining compliance with Section 7.11 for the fiscal quarter with respect to which such Cure Amount was made.

(e) There can be no more than five (5) fiscal quarters in which the cure rights set forth in this Section 8.04 are exercised during the term of the Facilities.

ARTICLE IX.
ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints Citi to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and no Loan Party have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (including the second paragraph

of Section 10.05), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

Section 9.02 Rights as a Lender.

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

Section 9.03 Exculpatory Provisions.

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

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and
- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.
- (d) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in

Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

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

Section 9.04 Reliance by Administrative Agent.

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

Section 9.05 Delegation of Duties.

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

Section 9.06 Resignation of Administrative Agent.

The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower at all times other than upon the occurrence and during the continuation of an Event of Default under Section 8.01(f) (which consent of the Borrower shall not be unreasonably withheld or delayed), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Section 9.07 Non-Reliance on Administrative Agent and Other Lenders.

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

Section 9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Administrative Agent, Bookrunners, Arrangers, Syndication Agents or Documentation

Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder

Section 9.09 Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09, 10.04 and 10.05) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04 and 10.05.

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

Section 9.10 Collateral and Guaranty Matters

Each of the Lenders (including in its capacities as a potential Hedge Bank) irrevocably authorizes the Administrative Agent:

(a) to automatically release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Term Loan Secured Hedge Agreements as to which arrangements satisfactory to the applicable

Hedge Bank shall have been made), (ii) at the time the property subject to such Lien is Disposed or to be Disposed to any Person other than a Loan Party as part of or in connection with any Disposition permitted hereunder or under any other Loan Document, (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below or (v) that constitutes Excluded Assets;

(b) to release or subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(u) to the extent required by the holder of, or pursuant to the terms of any agreement governing, the obligations secured by such Liens; and

(c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Restricted Subsidiary or becomes an Excluded Subsidiary as a result of a transaction or designation permitted hereunder; *provided* that no such release shall occur if such Guarantor continues to be a guarantor in respect of any Indebtedness incurred pursuant to Section 7.03(r), the Existing Notes, any Permitted First Priority Refinancing Debt, any Permitted Junior Priority Refinancing Debt, any Permitted Unsecured Refinancing Debt, any Junior Financing or any Permitted Refinancing of any of the foregoing.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

Section 9.11 Term Loan Secured Hedge Agreements; Intercreditor Agreements.

Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Term Loan Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative

Agent may request, from the applicable Hedge Bank.

The Lenders hereby authorize the Administrative Agent to enter into any First Lien Intercreditor Agreement, any Junior Lien Intercreditor Agreement or other intercreditor agreement or arrangement permitted under this Agreement and any such intercreditor agreement is binding upon the Lenders.

Section 9.12 Withholding Tax Indemnity.

To the extent required by any applicable Laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within 10 days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by a Loan Party pursuant to Section 3.01 and Section 3.04 and without limiting or expanding the obligation of the Loan Parties to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.12. The agreements in this Section 9.12 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

ARTICLE X.
MISCELLANEOUS

Section 10.01 Amendments, Etc. Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that, no such amendment, waiver or consent shall:

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

(b) postpone any date scheduled for, or reduce or forgive the amount of, any

payment of principal or interest under Section 2.07 or 2.08 (other than pursuant to Section 2.08(b)) or postpone any date for the payment of fees hereunder without the written consent of each Lender directly affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest and it further being understood that any change to the definition of "Consolidated First Lien Net Leverage Ratio," "Consolidated Cash Interest Coverage Ratio," "Total Leverage Ratio" or "Secured Leverage Ratio" or, in each case, in the component definitions thereof shall not constitute a reduction or forgiveness in any rate of interest;

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (i) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document (or extend the timing of payments of such fees or other amounts) without the written consent of each Lender directly affected thereby, it being understood that any change to the definition of "Consolidated First Lien Net Leverage Ratio," "Consolidated Cash Interest Coverage Ratio," "Total Leverage Ratio" or "Secured Leverage Ratio" or, in each case, in the component definitions thereof shall not constitute a reduction in any rate of interest; *provided* that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 10.01 or the definition of "Required Lenders," "Required Facility Lenders," "Required Class Lenders" or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents or Section 8.03, without the written consent of each Lender directly affected thereby (it being understood that each Lender shall be directly and adversely affected by a change to the "Required Lenders" definition or the "Pro Rata Share" definition);

(e) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(f) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the aggregate value of the Guarantees, without the written consent of each Lender;

and *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document and (ii) Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification.

Notwithstanding the foregoing, no Lender consent is required to effect any amendment or supplement to the ABL Intercreditor Agreement, any First Lien Intercreditor Agreement, any Junior Lien Intercreditor Agreement or other intercreditor agreement or arrangement permitted

under this Agreement that is for the purpose of adding the holders of Permitted First Priority Refinancing Debt, or Permitted Junior Priority Refinancing Debt, as expressly contemplated by the terms of such ABL Intercreditor Agreement, such First Lien Intercreditor Agreement, such Junior Lien Intercreditor Agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders); *provided, further*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the Replacement Term Loans (as defined below) to permit the refinancing of all outstanding Term Loans of any Class ("**Refinanced Term Loans**") with replacement term loans ("**Replacement Term Loans**") hereunder; *provided* that (a) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Refinanced Term Loans, (b) the Applicable Rate for such Replacement Term Loans shall not be higher than the Applicable Rate for such Refinanced Term Loans unless the maturity of the Replacement Term Loans is at least one year later than the maturity of the Refinanced Term Loans, (c) the Weighted Average Life to Maturity of Replacement Term Loans shall not be shorter than the Weighted Average Life to Maturity of such Refinanced Term Loans, at the time of such refinancing (except by virtue of amortization or prepayment of the Refinanced Term Loans prior to the time of such incurrence) and (d) all other terms applicable to such Replacement Term Loans shall be substantially identical to, or less favorable to the Lenders providing such Replacement Term Loans than, those applicable to such Refinanced Term Loans except to the extent necessary to provide for covenants and other terms applicable to any period after the Latest Maturity Date of the Term Loans in effect immediately prior to such refinancing.

Notwithstanding anything to the contrary contained in this Section 10.01, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel or (ii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

Section 10.02 Notices and Other Communications; Facsimile Copies.

(a) Notices; Effectiveness; Electronic Communications.

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

(i) if to the Borrower or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

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

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (B) below shall be effective as provided in such subsection (B).

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

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(b) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Loan Parties, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Loan Parties, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

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

(d) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby

consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies.

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

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Attorney Costs and Expenses.

The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent, the Syndication Agents, the Arrangers and the Bookrunners for all reasonable out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of Cahill Gordon & Reindel LLP (and any other counsel retained with the Borrower's consent (such consent not to be unreasonably withheld or delayed)) and, if necessary, one local and foreign counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for the Administrative Agent and the Lenders taken as a whole and (b) from and after the Closing Date, to pay or reimburse the Administrative Agent, the Syndication Agents, the Arrangers, the Bookrunners and the Lenders for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief

Law, and including all respective Attorney Costs, which shall be limited to Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) days following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail; *provided* that, with respect to the Closing Date, all amounts due under this Section 10.04 shall be paid on the Closing Date solely to the extent invoiced to the Borrower within three (3) Business Days of the Closing Date (or such shorter period as the Borrower may agree). If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its discretion. For the avoidance of doubt, this Section 10.04 shall not apply to Taxes, except any Taxes that represent costs and expenses arising from any non-Tax claim.

Section 10.05 Indemnification by the Borrower.

The Borrower shall indemnify and hold harmless each Agent, Agent-Related Person, Lender, Arranger and Bookrunner and their Affiliates, and their respective officers, directors, employees, partners, agents, counsel, advisors and other representatives of the foregoing (collectively the “**Indemnitees**”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including reasonable Attorney Costs of one counsel for all Indemnitees and, if necessary, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, or another firm of counsel for such affected Indemnitee)) of any such Indemnitee of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment or Loan or the use or proposed use of the proceeds therefrom, (c) any actual or alleged presence or Release of Hazardous Materials at, on, under or from any property or facility currently or formerly owned, leased or operated by the Loan Parties or any Subsidiary, or any Environmental Liability of the Loan Parties or any Subsidiary or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) (a “**Proceeding**”) and regardless of whether any Indemnitee is a party thereto or whether or not such Proceeding is brought by the Borrower or any other person and, in each case, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee (all of the foregoing, collectively, the “**Indemnified Liabilities**”); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any of its controlled Affiliates or controlling Persons or any of the officers, directors, employees, agents, advisors or members of any of the foregoing, in each case who are involved in or aware of the Transaction (as determined by a court

of competent jurisdiction in a final and non-appealable decision), (y) material breach of the Loan Documents by such Indemnitee or one of its Affiliates, as determined by a final non-appealable judgment of a court of competent jurisdiction or (z) disputes solely between and among such Indemnitees to the extent such disputes do not arise from any act or omission of the Borrower or any of its Affiliates (other than with respect to a claim against an Indemnitee acting in its capacity as an Agent or Arranger or similar role under the Loan Documents unless such claim arose from the gross negligence, bad faith or willful misconduct of such Indemnitee). No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, nor shall any Indemnitee, Loan Party or any Subsidiary have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party and for any out-of-pocket expenses); it being agreed that this sentence shall not limit the indemnification obligations of Holdings or any Subsidiary. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) days after written demand therefor (together with backup documentation supporting such reimbursement request); *provided, however*, that such Indemnitee shall promptly refund such amount to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification rights with respect to such payment pursuant to the express terms of this Section 10.05. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. For the avoidance of doubt, this Section 10.05 shall not apply to Taxes, except any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-Tax claims.

To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under this Section 10.05 or Section 10.04 to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity.

Section 10.06 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right

of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.07 Successors and Assigns

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (except as permitted by Section 7.04) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Assignee pursuant to an assignment made in accordance with the provisions of Section 10.07(b) (such an assignee, an “**Eligible Assignee**”) and in the case of any Assignee that is Holdings or any of its Subsidiaries, Section 10.07(l), (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(g) or (iv) to an SPC in accordance with the provisions of Section 10.07(h) (and any other attempted assignment or transfer by any party hereto shall be null and void); *provided, however*, that notwithstanding the foregoing, no Lender may assign or transfer by participation any of its rights or obligations hereunder to (i) a natural Person or (ii) to Holdings, the Borrower or any of their respective Subsidiaries (except pursuant to Section 2.05(a)(v) or Section 10.07(l)). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (1) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (“**Assignees**”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower, *provided* that the Borrower shall be deemed to have consented to any such assignment of the Term Loans unless it shall have objected thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; *provided further* that no consent of the Borrower shall be required for (i) an assignment of all or a portion of the Term Loans (x) to a Lender, an Affiliate of a Lender or an Approved Fund or (y) prior to the completion of primary syndication settlement of the Term B Loans, (ii) if an Event of Default under Section 8.01(a) or,

solely with respect to the Borrower, Section 8.01(f) has occurred and is continuing, any Assignee or (iii) an assignment of all or a portion of the Loans pursuant to Section 10.07(l); and

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment (i) of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund or (ii) from an Agent to its Affiliates.

Notwithstanding the foregoing or anything to the contrary set forth herein, to the extent any Lender is required to assign any portion of its Commitments, Loans and other rights, duties and obligations hereunder in order to comply with applicable Laws, such assignment may be made by such Lender without the consent of the Borrower, the Administrative Agent or any other party hereto so long as such Lender complies with the requirements of Section 10.07(b)(ii).

(ii) Assignments shall be subject to the following additional conditions:

(C) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than an amount of \$1,000,000 (in the case of a Term Loan), and shall be in increments of an amount of \$1,000,000 (in the case of Term Loans) in excess thereof unless each of the Borrower and the Administrative Agent otherwise consents; *provided* that such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(D) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; *provided* that only one such fee shall be payable in the event of simultaneous assignments to or from two or more Approved Funds; and

(E) other than in the case of assignments pursuant to Section 10.07(l), the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

This paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption, (1) other than in connection with an assignment pursuant to Section 10.07(l) the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (2) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto

but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Term Note, the Borrower (at its expense) shall execute and deliver a Term Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(e).

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it, and each notice of cancellation of any Loans delivered by the Borrower pursuant to Section 10.07(l) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender (but in the case of any Lender, with respect to its own interest only), at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(d) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(e) Any Lender may at any time, sell participations to any Person (other than a natural person) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a) through (f) of the first proviso to Section 10.01 that requires the affirmative vote of such Lender. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations of such Sections) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(c). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and related interest amounts) of each participant's interest in the Loans or other obligations under this

Agreement (the “**Participant Register**”). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The portion of any Participant Register relating to any Participant or SPC requesting payment from the Borrower or seeking to exercise its rights under Section 10.09 shall only be available for inspection by the Borrower upon reasonable request to the extent that such disclosure is necessary in connection with a Tax audit to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(f) A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to a greater payment results from a change in any Law after the sale of the participation takes place.

(g) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Term Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a “**Granting Lender**”) may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an “**SPC**”) the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof, shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) an SPC shall be entitled to the benefit of Sections 3.01, 3.04 and 3.05 (subject to the requirements and the limitations of such sections), but neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement except to the extent that the increase or change results from a change in any Law after the grant to such SPC takes place, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Term Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Term Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) [Reserved].

(k) [Reserved].

(l) Any Lender may, so long as no Default or Event of Default has occurred and is continuing, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to Holdings or the Borrower through (x) Dutch auctions open to all Lenders on a pro rata basis in accordance with procedures of the type described in Section 2.05(a)(v) or (y) notwithstanding Sections 2.12 and 2.13 or any other provision in this Agreement, open market purchases on a non-pro rata basis; *provided*, that, in connection with assignments pursuant to clause (y) above:

(i) if Holdings is the assignee, upon such assignment, transfer or contribution, Holdings shall automatically be deemed to have contributed the principal amount of such Term Loans, plus all accrued and unpaid interest thereon, to the Borrower; or

(ii) if the assignee is the Borrower (including through contribution or transfers set forth in clause (i) above), (a) the principal amount of such Term Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Borrower shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (b) the aggregate outstanding principal amount of Term Loans of the remaining Lenders shall reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (c) the Borrower shall promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register.

Section 10.08 Confidentiality.

Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' managers, administrators, directors, officers, employees, trustees, partners, investors, investment advisors and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential

nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority or self regulatory authority having or asserting jurisdiction over such Person (including any Governmental Authority regulating any Lender or its Affiliates), *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority) unless such notification is prohibited by law, rule or regulation; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority) unless such notification is prohibited by law, rule or regulation; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any pledgee referred to in Section 10.07(g), direct or indirect contractual counterparty to a Swap Contract, Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in any of its rights or obligations under this Agreement; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08 or becomes available to the Administrative Agent, any Arranger, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than a Loan Party or its related parties (so long as such source is not known to the Administrative Agent, such Arranger, such Lender or any of their respective Affiliates to be bound by confidentiality obligations to any Loan Party); (h) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to Loan Parties and their Subsidiaries received by it from such Lender); or (i) in connection with the exercise of any remedies hereunder, under any other Loan Document or the enforcement of its rights hereunder or thereunder. For the purposes of this Section 10.08, “**Information**” means all information received from the Loan Parties relating to any Loan Party, its Affiliates or its Affiliates’ directors, officers, employees, trustees, investment advisors or agents, relating to Holdings, the Borrower or any of its Subsidiaries or its business, other than any such information that is publicly available to any Agent or any Lender prior to disclosure by any Loan Party other than as a result of a breach of this Section 10.08; *provided* that all information received after the Closing Date from Holdings, the Borrower or any of its Subsidiaries shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential.

Section 10.09 Setoff.

In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Administrative Agent, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time, without prior notice to the Borrower, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party and each of its Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates or the Administrative Agent to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations owing to such Lender and its Affiliates or the Administrative Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand

under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent and each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent and such Lender may have at Law.

Section 10.10 Interest Rate Limitation

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.11 Counterparts.

This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier be confirmed by a manually signed original thereof; *provided* that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier.

Section 10.12 Integration; Termination.

This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 10.13 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered

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

Section 10.14 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions; *provided, that*, the Lenders shall charge no fee in connection with any such amendment. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.15 GOVERNING LAW.

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

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY (BOROUGH OF MANHATTAN) OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND AGREES THAT IT WILL NOT COMMENCE OR SUPPORT ANY SUCH ACTION OR PROCEEDING IN ANOTHER JURISDICTION. EACH LOAN PARTY, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN TELECOPIER) IN SECTION 10.02. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT

THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.16 WAIVER OF RIGHT TO TRIAL BY JURY

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

Section 10.17 Binding Effect.

This Agreement shall become effective when it shall have been executed by the Loan Parties and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Loan Parties, each Agent and each Lender and their respective successors and assigns, in each case in accordance with Section 10.07 (if applicable) and except that no Loan Party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders except as permitted by Section 7.04.

Section 10.18 USA Patriot Act.

Each Lender that is subject to the USA Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name, address and tax identification number of such Loan Party and other information regarding such Loan Party that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the USA Patriot Act. This notice is given in accordance with the requirements of the USA Patriot Act and is effective as to the Lenders and the Administrative Agent.

Section 10.19 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the other Arrangers are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative

Agent, the other Arrangers and the Lenders, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, each other Arranger and each Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for each Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any other Arranger nor any Lender has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the other Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent nor any other Arranger nor any Lender has any obligation to disclose any of such interests to the Loan Parties or any of their respective Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the other Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.20 ABL Intercreditor Agreement.

The Administrative Agent is authorized to enter into the ABL Intercreditor Agreement, and each of the parties hereto acknowledges that it has received a copy of the ABL Intercreditor Agreement and that the ABL Intercreditor Agreement is binding upon it. Each Lender (a) hereby consents to the subordination of the Liens on the ABL Priority Collateral securing the Obligations on the terms set forth in the ABL Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the ABL Intercreditor Agreement and (c) hereby authorizes and instructs the Administrative Agent to enter into the ABL Intercreditor Agreement and any amendments or supplements expressly contemplated thereby, including the Replacement Intercreditor Agreement, and to subject the Liens on the ABL Priority Collateral securing the Obligations to the provisions of the ABL Intercreditor Agreement. The foregoing provisions are intended as an inducement to the ABL Claimholders to extend credit to the borrowers under the ABL Credit Agreement and such ABL Claimholders are intended third-party beneficiaries of such provisions and the provisions of the ABL Intercreditor Agreement. The provisions of this Section 10.20 are for the sole benefit of the Lenders and the Administrative Agent and shall not afford any right to, or constitute a defense available to, any Loan Party. In the event of any conflict between the terms of this Agreement and the terms of the ABL Intercreditor Agreement, the terms of the ABL Intercreditor Agreement shall control.

ARTICLE XI
GUARANTEE

Section 11.01 The Guarantee.

Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety to each Secured Party and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest

(including any interest, fees, costs or charges that would accrue but for the provisions of (i) the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws) on the Loans made by the Lenders to, and the Term Notes held by each Lender of, the Borrower (other than such Guarantor), and all other Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document or any Term Loan Secured Hedge Agreement, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the “**Guaranteed Obligations**”). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 11.02 Obligations Unconditional.

The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower under this Agreement, the Term Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or the Term Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or except as permitted pursuant to Section 11.09, any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, any Secured Party or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor pursuant to Section 11.09.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, invalidity or enforceability of Guaranteed Obligations, amendments or waivers of any Guaranteed Obligations, non-perfection of any Collateral and any other circumstance that might constitute a defense of the Borrower or the Guarantors, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Term Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against the Borrower or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Secured Parties, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

Section 11.03 Reinstatement.

The obligations of the Guarantors under this Article XI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 11.04 Subrogation; Subordination.

Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party to any Person that is not a Loan Party permitted pursuant to Section 7.03(b)(ii) or 7.03(d) shall be subordinated to such Loan Party's Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness.

Section 11.05 Remedies.

The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Term Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.02) for purposes of Section 11.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01.

Section 11.06 Instrument for the Payment of Money.

Each Guarantor hereby acknowledges that the guarantee in this Article XI constitutes an instrument for the payment of money, and consents and agrees that any Secured Party or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 11.07 Continuing Guarantee.

The guarantee in this Article XI is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 11.08 General Limitation on Guarantee Obligations.

In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Loan Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.10) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 11.09 Release of Guarantors.

If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or property of any Subsidiary Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party or (ii) any Subsidiary Guarantor becomes an Excluded Subsidiary (any such Subsidiary Guarantor, and any Subsidiary Guarantor referred to in clause (i), a “**Transferred Guarantor**”), such Transferred Guarantor shall, upon the consummation of such sale or transfer or other transaction, be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and its

obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Administrative Agent pursuant to the Collateral Documents shall be automatically released, and, so long as the Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, the Administrative Agent shall take such actions as are necessary to effect each release described in this Section 11.09 in accordance with the relevant provisions of the Collateral Documents; *provided*, that no Guarantor shall be released as provided in this paragraph if such Guarantor continues to be a guarantor in respect of the Senior Notes, any Indebtedness incurred pursuant to Section 7.03(r), the Existing Notes, any Permitted First Priority Refinancing Debt, any Permitted Junior Priority Refinancing Debt, any Permitted Unsecured Refinancing Debt, any Junior Financing or any Permitted Refinancing of any of the foregoing.

When all Commitments hereunder have terminated (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Term Loan Secured Hedge Agreements as to which arrangements satisfactory to the applicable Hedge Bank shall have been made), and all Loans or other Obligation hereunder which are accrued and payable have been paid or satisfied, this Agreement and the Guarantees made herein shall terminate with respect to all Obligations, except with respect to Obligations that expressly survive such repayment pursuant to the terms of this Agreement.

Section 11.10 Right of Contribution.

Each Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.04. The provisions of this Section 11.10 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Administrative Agent and the Secured Parties, and each Subsidiary Guarantor shall remain liable to the Administrative Agent and the Secured Parties for the full amount guaranteed by such Subsidiary Guarantor hereunder.

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

PRESTIGE BRANDS HOLDINGS, INC., as Holdings and a Guarantor

By: /s/ Ron Lombardi

Name: Ronald M. Lombardi

Title: Chief Financial Officer

PRESTIGE BRANDS, INC., as Borrower

By: /s/ Ron Lombardi

Name: Ronald M. Lombardi

Title: Chief Financial Officer

BLACKSMITH BRANDS, INC.
MEDTECH HOLDINGS, INC.
MEDTECH PRODUCTS INC.
PRESTIGE BRANDS HOLDINGS, INC.
PRESTIGE BRANDS INTERNATIONAL, INC.
PRESTIGE PERSONAL CARE HOLDINGS, INC.
PRESTIGE PERSONAL CARE, INC.
PRESTIGE SERVICES CORP.
THE CUTEX COMPANY
THE DENOREX COMPANY
THE SPIC AND SPAN COMPANY,
as Subsidiary Guarantors

By: /s/ Ron Lombardi

Name: Ronald M. Lombardi

Title: Chief Financial Officer

CITIBANK, N.A., as Administrative Agent and as a
Lender

By: /s/ Caesar Wyszomirsk
Name: Caesar Wyszomirsk
Title: Vice President

By: /s/ Caesar Wyszomirsk
Name: Caesar Wyszomirsk
Title: Vice President

TERM LOAN SECURITY AGREEMENT

dated as of

January 31, 2012

among

THE GRANTORS IDENTIFIED HEREIN

and

CITIBANK, N.A.,
as Administrative Agent

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TERM LOAN SECURITY AGREEMENT dated as of January 31, 2012, among the Grantors (as defined below), Citibank, N.A., as Administrative Agent for the Secured Parties (in such capacity, the “**Administrative Agent**”) and U.S. Bank National Association, as trustee for the Pari Passu Holders (in such capacity, the “**Pari Passu Trustee**”).

Reference is made to the Term Loan Credit Agreement dated as of January 31, 2012 (as amended, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among Prestige Brands Holdings, Inc., a Delaware corporation, (“**Holdings**”), Prestige Brands, Inc., a Delaware corporation, (the “**Borrower**”), certain other Subsidiaries of the Borrower from time to time party thereto, Citibank, N.A., as Administrative Agent, each lender from time to time party thereto (collectively, the “**Lenders**” and individually, a “**Lender**”), and the other agents named therein. The Lenders have agreed to extend credit to the Borrower subject to the terms and conditions set forth in the Credit Agreement. The obligations of the Lenders to extend such credit are conditioned upon, among other things, the execution and delivery of this Agreement. Holdings and the Subsidiary Parties are affiliates of the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement, and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit.

Pursuant to that certain Indenture dated March 24, 2010, as supplemented by the First Supplemental Indenture, dated as of November 1, 2010, evidencing 8.25% Senior Notes due 2018 issued by the Borrower (the “**Pari Passu Indenture**”), the holders of the notes issued under the Pari Passu Indenture (collectively, the “**Pari Passu Holders**”) extended credit to the Borrower upon the terms and subject to the conditions set forth therein.

The Pari Passu Indenture restricts the ability of certain of the Grantors to grant a security interest in the Collateral to secure the Credit Agreement Obligations, unless the Grantors grant an equal and ratable security interest in the Collateral to secure the Pari Passu Obligations.

Accordingly, the parties hereto agree as follows:

ARTICLE I **Definitions**

SECTION 1.01 Credit Agreement.

(a) Capitalized terms used in this Agreement and not otherwise defined herein have the meanings specified in the Credit Agreement. All terms (whether or not capitalized) defined in the UCC (as defined herein) and not defined in this Agreement have the meanings specified therein; the term “instrument” shall have the meaning specified in Article 9 of the UCC.

(b) The rules of construction specified in Article I of the Credit Agreement

also apply to this Agreement.

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

“**Account Debtor**” means any Person who is or who may become obligated to any Grantor under, with respect to or on account of an Account.

“**Accounts**” has the meaning specified in Article 9 of the UCC.

“**Administrative Agent**” has the meaning assigned to such term in the recitals of this Agreement.

“**Agreement**” means this Security Agreement.

“**Article 9 Collateral**” has the meaning assigned to such term in Section 3.01(a).

“**Borrower**” has the meaning assigned to such term in the recitals of this Agreement.

“**Collateral**” means the Article 9 Collateral and the Pledged Collateral.

“**Copyright License**” means any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned by any Grantor or that such Grantor otherwise has the right to license, or granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of such Grantor under any such agreement.

“**Copyrights**” means all of the following now owned or hereafter acquired by any Grantor: (a) all copyright rights in any work subject to the copyright laws of the United States, whether as author, assignee, transferee or otherwise, and (b) all registrations and applications for registration of any such copyright in the United States, including registrations, recordings, supplemental registrations and pending applications for registration in the USCO.

“**Credit Agreement**” has the meaning assigned to such term in the preliminary statement of this Agreement.

“**Credit Agreement Obligations**” has the meaning assigned to the term “Obligations” in the Credit Agreement.

“**Credit Agreement Secured Parties**” means, collectively, the Administrative Agent, the Lenders, the Hedge Banks and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05 of the Credit Agreement.

“**General Intangibles**” has the meaning specified in Article 9 of the UCC.

“**Grantor**” means the Borrower, each Guarantor that is a party hereto and each Guarantor that is a Domestic Subsidiary that becomes a party to this Agreement after the Closing Date pursuant to Section 6.12.

“**Intellectual Property**” means all intellectual property of every kind and nature now owned or hereafter acquired by any Grantor, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, trade secrets, the intellectual property rights in software and databases and related documentation and all additions and improvements to the foregoing.

“**Intellectual Property Security Agreements**” means the short-form Patent Security Agreement, short-form Trademark Security Agreement and short-form Copyright Security Agreement, each substantially in the form attached hereto as Exhibits III, IV and V, respectively.

“**License**” means any Patent License, Trademark License, Copyright License or other Intellectual Property license or sublicense agreement to which any Grantor is a party, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder or with respect thereto including damages and payments for past, present or future infringements or violations thereof, and (iii) rights to sue for past, present and future violations thereof.

“**Pari Passu Holders**” has the meaning assigned to such term in the preliminary statement of this Agreement.

“**Pari Passu Indenture**” has the meaning assigned to such term in the preliminary statement of this Agreement.

“**Pari Passu Obligations**” means all of the following, whether now existing or hereafter incurred: (a) the prompt performance and observance by each Grantor whether now existing or hereafter incurred of all of its obligations under the Pari Passu Indenture and the notes issued thereunder and (b) all other indebtedness, liabilities and obligations of any kind or nature, now existing or hereafter arising, owing from any Grantor to any Pari Passu Holder or the Pari Passu Trustee pursuant to or in connection with a transaction contemplated by the Pari Passu Indenture, howsoever evidenced, created, incurred or acquired, whether primary, secondary, direct, contingent or joint and several, including, without limitation, all obligations and liabilities incurred in connection with collecting and enforcing the Pari Passu Obligations.

“**Pari Passu Secured Parties**” means the Pari Passu Holders and the Pari Passu Trustee.

“**Pari Passu Trustee**” has the meaning assigned to such term in the recitals of this

Agreement.

“Patent License” means any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, is in existence, or granting to any Grantor any right to make, use or sell any invention on which a Patent, now or hereafter owned by any third party, is in existence, and all rights of any Grantor under any such agreement.

“Patents” means all of the following now owned or hereafter acquired by any Grantor: (a) all letters Patent of the United States in or to which any Grantor now or hereafter has any right, title or interest therein, all registrations and recordings thereof, and all applications for letters Patent of the United States, including registrations, recordings and pending applications in the USPTO, and (b) all reissues, continuations, divisions, continuations-in-part, renewals, improvements or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein.

“Perfection Certificate” means a certificate substantially in the form of Exhibit II, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by a Responsible Officer of each of the Grantors.

“Pledged Collateral” has the meaning assigned to such term in Section 2.01.

“Pledged Debt” has the meaning assigned to such term in Section 2.01.

“Pledged Equity” has the meaning assigned to such term in Section 2.01.

“Pledged Securities” means the Pledged Equity and Pledged Debt.

“Secured Obligations” means, collectively, the Credit Agreement Obligations and the Pari Passu Obligations.

“Secured Parties” means, collectively, the Credit Agreement Secured Parties and the Pari Passu Secured Parties.

“Security Agreement Supplement” means an instrument substantially in the form of Exhibit I hereto.

“Subsidiary Parties” means (a) the Restricted Subsidiaries identified on Schedule I and (b) each other Restricted Subsidiary that becomes a party to this Agreement as a Subsidiary Party after the Closing Date pursuant to Section 6.12.

“Trademark License” means any written agreement, now or hereafter in effect,

granting to any third party any right to use any Trademark now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, or granting to any Grantor any right to use any Trademark now or hereafter owned by any third party, and all rights of any Grantor under any such agreement.

“**Trademarks**” means all of the following now owned or hereafter acquired by any Grantor: (a) all trademarks, service marks, trade names, corporate names, trade dress, logos, designs, fictitious business names other source or business identifiers, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the USPTO or any similar offices in any State of the United States or any political subdivision thereof, and all extensions or renewals thereof, as well as any unregistered trademarks and service marks used by a Grantor and (b) all goodwill connected with the use of and symbolized thereby.

“**UCC**” means the Uniform Commercial Code as from time to time in effect in the State of New York; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“**USCO**” means the United States Copyright Office.

“**USPTO**” means the United States Patent and Trademark Office

ARTICE II

Pledge of Securities

SECTION 2.01 Pledge. As security for the payment or performance, as the case may be, in full of the Secured Obligations, including the Guarantees, each of the Grantors hereby assigns and pledges to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest in all of such Grantors’ right, title and interest in, to and under:

(i) all Equity Interests held by it that are listed on Schedule II and any other Equity Interests obtained in the future by such Grantor and the certificates representing all such Equity Interests (the “**Pledged Equity**”); *provided* that the Pledged Equity shall not include (A) Excluded Assets, (B) Equity Interests of a Domestic Subsidiary that has no material assets other than Equity Interests (including any Indebtedness treated as equity for U.S. federal tax purposes) of one or more Foreign Subsidiaries (other than Material Foreign Subsidiaries) that are CFCs or (C) for the avoidance of doubt, Equity Interests in excess of 65% of the issued and outstanding

Equity Interests of (1) any Restricted Subsidiary that is a wholly owned Material Domestic Subsidiary that is directly owned by the Borrower or by any Subsidiary Guarantor and that has no material assets other than Equity Interests (including any Indebtedness treated as equity for U.S. federal tax purposes) of one or more Material Foreign Subsidiaries that are CFCs and (2) any Restricted Subsidiary that is a wholly owned Material Foreign Subsidiary that is directly owned by the Borrower or by any Subsidiary Guarantor;

(ii) (A) the debt securities owned by it and listed opposite the name of such Grantor on Schedule II, (B) any debt securities obtained in the future by such Grantor and (C) the promissory notes (including the Intercompany Note) and any other instruments evidencing such debt securities (the “**Pledged Debt**”); *provided* that the Pledged Debt shall not include any Excluded Assets;

(iii) all other property that may be delivered to and held by the Administrative Agent pursuant to the terms of this Section 2.01;

(iv) subject to Section 2.06, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the securities referred to in clauses (i) and (ii) above;

(v) subject to Section 2.06, all rights and privileges of such Grantor with respect to the securities and other property referred to in clauses (i), (ii), (iii) and (iv) above; and

(vi) all Proceeds of any of the foregoing

(the items referred to in clauses (i) through (vi) above being collectively referred to as the “**Pledged Collateral**”).

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, forever, *subject, however*, to the terms, covenants and conditions hereinafter set forth.

SECTION 2.02 Delivery of the Pledged Equity.

(a) Each Grantor agrees promptly (but in any event within 30 days after receipt by such Grantor or such longer period as the Administrative Agent may agree in its reasonable discretion) to deliver or cause to be delivered to the Administrative Agent, for the benefit of the Secured Parties, any and all (i) Pledged Equity to the extent certificated and (ii) to the extent required to be delivered pursuant to paragraph (b) of this Section 2.02, Pledged Debt.

(b) Each Grantor will cause (i) any Indebtedness for borrowed money having an aggregate principal amount in excess of \$3,000,000 owed to such Grantor by any Person that

is evidenced by a duly executed promissory note and (ii) the Intercompany Note to be pledged and delivered to the Administrative Agent, for the benefit of the Secured Parties, pursuant to the terms hereof.

(c) Upon delivery to the Administrative Agent, any Pledged Securities shall be accompanied by stock or security powers duly executed in blank or other instruments of transfer reasonably satisfactory to the Administrative Agent and by such other instruments and documents as the Administrative Agent may reasonably request (other than instruments or documents governed by or requiring actions in any non-U.S. jurisdiction related to Equity Interests of Foreign Subsidiaries) to perfect its security interest hereunder. Each delivery of Pledged Securities shall be accompanied by a schedule describing the securities, which schedule shall be deemed to supplement Schedule II and made a part hereof; *provided* that failure to supplement Schedule II shall not affect the validity of such pledge of such Pledged Equity. Each schedule so delivered shall supplement any prior schedules so delivered.

SECTION 2.03 Representations, Warranties and Covenants. Each Grantor represents, warrants and covenants to and with the Administrative Agent, for the benefit of the Secured Parties, that:

(a) As of the date hereof, Schedule II includes all Equity Interests, debt securities and promissory notes required to be pledged by such Grantor hereunder in order to satisfy the Collateral and Guarantee Requirement;

(b) the Pledged Equity issued by the Borrower and each wholly-owned Restricted Subsidiary have been duly and validly authorized and issued by the issuers thereof and are fully paid and nonassessable;

(c) except for the security interests granted hereunder, such Grantor (i) is, subject to any transfers made in compliance with the Credit Agreement, the direct owner, beneficially and of record, of the Pledged Equity indicated on Schedule II, (ii) holds the same free and clear of all Liens, other than (A) Liens created by the Collateral Documents, the ABL Facility Documentation and the documentation governing the Existing Notes, any Permitted First Priority Refinancing Debt, any Permitted Junior Priority Refinancing Debt and any secured Permitted Ratio Debt and (B) nonconsensual Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement, and (iii) if requested by the Administrative Agent, will defend its title or interest thereto or therein against any and all Liens (other than the Liens permitted pursuant to this Section 2.03(c)), however arising, of all Persons whomsoever;

(d) except for restrictions and limitations (i) imposed or permitted by the Loan Documents or securities laws generally, (ii) in the case of Pledged Equity of Persons that are not Subsidiaries, transfer restrictions that exist at the time of acquisition of Equity Interests in such Persons, and (iii) except as described in the Perfection Certificate, the Pledged Collateral is freely transferable and assignable, and none of the Pledged Collateral is subject to any option, right of first refusal, shareholders agreement, charter

or by-law provisions or contractual restriction of any nature that might prohibit, impair, delay or otherwise affect in any manner material and adverse to the Secured Parties the pledge of such Pledged Collateral hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Administrative Agent of rights and remedies hereunder;

(e) the execution and performance by the Grantors of this Agreement are within each Grantor's corporate powers and have been duly authorized by all necessary corporate action or other organizational action;

(f) no consent or approval of any Governmental Authority, any securities exchange or any other Person was or is necessary to the validity of the pledge effected hereby, except for (i) filings and registrations necessary to perfect the Liens on the Collateral granted by the Grantors in favor of the Secured Parties and (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given, or made or to be in full force and effect pursuant to the Collateral and Guarantee Requirement);

(g) by virtue of the execution and delivery by each Grantor of this Agreement, and delivery of the Pledged Securities to and continued possession by the Administrative Agent in the State of New York, the Administrative Agent for the benefit of the Secured Parties has a legal, valid and perfected lien upon and security interest in such Pledged Security as security for the payment and performance of the Secured Obligations to the extent such perfection is governed by the UCC, subject only to (i) Liens created by the ABL Facility Documentation and the documentation governing the Existing Notes, any Permitted First Priority Refinancing Debt, any Permitted Junior Priority Refinancing Debt and any secured Permitted Ratio Debt and (ii) nonconsensual Liens permitted by Section 7.01 of the Credit Agreement; and

(h) the pledge effected hereby is effective to vest in the Administrative Agent, for the benefit of the Secured Parties, the rights of the Administrative Agent in the Pledged Collateral to the extent intended hereby.

Subject to the terms of this Agreement, each Grantor hereby agrees that upon the occurrence and during the continuance of an Event of Default, it will comply with instructions of the Administrative Agent with respect to the Equity Interests in such Grantor that constitute Pledged Equity hereunder that are not certificated without further consent by the applicable owner or holder of such Equity Interests.

Notwithstanding anything to the contrary in this Agreement, to the extent any provision of this Agreement or the Credit Agreement excludes any assets from the scope of the Pledged Collateral, or from any requirement to take any action to perfect any security interest in favor of the Administrative Agent in the Pledged Collateral, the representations, warranties and covenants made by any relevant Grantor in this Agreement with respect to the creation,

perfection or priority (as applicable) of the security interest granted in favor of the Administrative Agent (including, without limitation, this Section 2.03) shall be deemed not to apply to such excluded assets.

SECTION 2.04 Certification of Limited Liability Company and Limited Partnership Interests. No interest in any limited liability company or limited partnership controlled by any Grantor that constitutes Pledged Equity shall be represented by a certificate unless (i) the limited liability company agreement of such limited liability company or partnership agreement of such limited partnership expressly provides that such interests shall be a “security” within the meaning of Article 8 of the UCC of the applicable jurisdiction, and (ii) such certificate shall be delivered to the Administrative Agent in accordance with Section 2.02. Any limited liability company and any limited partnership controlled by any Grantor shall either (a) not include in its operative documents any provision that any Equity Interests in such limited liability company or such limited partnership be a “security” as defined under Article 8 of the Uniform Commercial Code or (b) certificate any Equity Interests in any such limited liability company or such limited partnership. To the extent an interest in any limited liability company or limited partnership controlled by any Grantor and pledged under Section 2.01 is certificated or becomes certificated, (i) each such certificate shall be delivered to the Administrative Agent, pursuant to Section 2.02(a) and (ii) such Grantor shall fulfill all other requirements under Section 2.02 applicable in respect thereof. Such Grantor hereby agrees that if any of the Pledged Collateral is at any time not evidenced by certificates of ownership, then each applicable Grantor shall, to the extent permitted by applicable law, if necessary or, upon the request of the Administrative Agent, desirable to perfect a security interest in such Pledged Collateral, cause such pledge to be recorded on the equity holder register or the books of the issuer, execute any customary pledge forms or other documents necessary or appropriate to perfect the pledge and give the Administrative Agent the right to transfer such Pledged Collateral under the terms hereof.

SECTION 2.05 Registration in Nominee Name; Denominations. If an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given the Borrower prior written notice of its intent to exercise such rights, (a) the Administrative Agent, on behalf of the Secured Parties, shall have the right to hold the Pledged Securities in its own name as pledgee, the name of its nominee (as pledgee or as sub-agent) or the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Administrative Agent and each Grantor will promptly give to the Administrative Agent copies of any written notices or other written communications received by it with respect to Pledged Equity registered in the name of such Grantor and (b) the Administrative Agent shall have the right to exchange the certificates representing Pledged Equity for certificates of smaller or larger denominations for any purpose consistent with this Agreement, to the extent permitted by the documentation governing such Pledged Securities.

SECTION 2.06 Voting Rights; Dividends and Interest.

(a) Unless and until an Event of Default shall have occurred and be continuing and the Administrative Agent shall have provided prior notice to the Borrower that the rights of the Grantor under this Section 2.06 are being suspended:

(i) Each Grantor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Securities or any part thereof and each Grantor agrees that it shall exercise such rights for purposes consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents.

(ii) The Administrative Agent shall promptly (after reasonable advance notice) execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (i) above.

(iii) Each Grantor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Securities to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable Laws; *provided* that any noncash dividends, interest, principal or other distributions that would constitute Pledged Equity or Pledged Debt, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities or received in exchange for Pledged Securities or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Pledged Collateral, and, if received by any Grantor, shall not be commingled by such Grantor with any of its other funds or property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Administrative Agent and the Secured Parties and shall be promptly (and in any event within 10 Business Days or such longer period as the Administrative Agent may agree in its reasonable discretion) delivered to the Administrative Agent in the same form as so received (with any necessary endorsement reasonably requested by the Administrative Agent). So long as no Default or Event of Default has occurred and is continuing, the Administrative Agent shall promptly deliver to each Grantor any Pledged Securities in its possession if requested to be delivered to the issuer thereof in connection with any exchange or redemption of such Pledged Securities permitted by the Credit Agreement in accordance with this Section 2.06(a)(iii).

(b) Upon the occurrence and during the continuance of an Event of Default, after the Administrative Agent shall have notified the Borrower of the suspension of the Grantors' rights under paragraph (a)(iii) of this Section 2.06, then all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (a)(iii) of this Section 2.06 shall cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions. All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 2.06 shall be held in trust for the benefit of the Administrative Agent, shall be segregated from other property or funds of such Grantor and shall be promptly (and in any event within 10 days or such longer period as the Administrative Agent may agree in its

reasonable discretion) delivered to the Administrative Agent upon demand in the same form as so received (with any necessary endorsement reasonably requested by the Administrative Agent). Any and all money and other property paid over to or received by the Administrative Agent pursuant to the provisions of this paragraph (b) shall be retained by the Administrative Agent in an account to be established by the Administrative Agent upon receipt of such money or other property and shall be applied in accordance with the provisions of Section 4.02. After all Events of Default have been cured or waived, the Administrative Agent shall promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (a)(iii) of this Section 2.06 and that remain in such account.

(c) Upon the occurrence and during the continuance of an Event of Default, after the Administrative Agent shall have provided the Borrower with notice of the suspension of its rights under paragraph (a)(i) of this Section 2.06, then all rights of any Grantor to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to paragraph (a)(i) of this Section 2.06, and the obligations of the Administrative Agent under paragraph (a)(ii) of this Section 2.06, shall cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; *provided* that, unless otherwise directed by the Required Lenders, the Administrative Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Grantors to exercise such rights. After all Events of Default have been cured or waived, each Grantor shall have the exclusive right to exercise the voting and/or consensual rights and powers that the Borrower would otherwise be entitled to exercise pursuant to the terms of paragraph (a)(i) above, and the obligations of the Administrative Agent under paragraph (a)(ii) of this Section 2.06 shall be reinstated.

(d) Any notice given by the Administrative Agent to the Borrower under Section 2.05 or Section 2.06 (i) shall be given in writing, (ii) may be given with respect to one or more Grantors at the same or different times and (iii) may suspend the rights of the Grantors under paragraph (a) (i) or paragraph (a)(iii) of this Section 2.06 in part without suspending all such rights (as specified by the Administrative Agent in its sole and absolute discretion) and without waiving or otherwise affecting the Administrative Agent's rights to give additional notices from time to time suspending other rights so long as an Event of Default has occurred and is continuing.

ARTICLE III

Security Interests in Personal Property

SECTION 3.01 Security Interest.

(a) As security for the payment or performance, as the case may be, in full of the Secured Obligations, including the Guarantees, each Grantor hereby assigns and pledges to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, and

hereby grants to the Administrative Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest (the “**Security Interest**”) in all right, title or interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “**Article 9 Collateral**”):

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all Documents;
- (iv) all Equipment;
- (v) all General Intangibles;
- (vi) all Goods;
- (vii) all Instruments;
- (viii) all Inventory;
- (ix) all Deposit Accounts;
- (x) all Investment Property;
- (xi) all books and records pertaining to the Article 9 Collateral;
- (xii) all Fixtures;

(xiii) all Letter-of-Credit Rights, but only to the extent constituting a supporting obligation for other Article 9 Collateral as to which perfection of security interests in such Article 9 Collateral is accomplished solely by the filing of a UCC financing statement;

(xiv) all Intellectual Property; and

(xv) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing and all Supporting Obligations, collateral security and guarantees given by any Person with respect to any of the foregoing;

provided that, notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a grant of a security interest in any Excluded Assets.

(b) Subject to Section 3.01(e), each Grantor hereby irrevocably authorizes the Administrative Agent for the benefit of the Secured Parties at any time and from time to time to file in any relevant jurisdiction any initial financing statements with respect to the Article 9 Collateral or any part thereof and amendments thereto that (i) indicate the Article 9 Collateral as “all assets” or “all personal property” of such Grantor or words of similar effect as being of an equal or lesser scope or with greater detail and (ii) contain the information required by Article 9 of the Uniform Commercial Code or the analogous legislation of each applicable jurisdiction for the filing of any financing statement or amendment, including whether such Grantor is an organization, the type of organization and, if required, any organizational identification number issued to such Grantor. Each Grantor agrees to provide such information to the Administrative Agent promptly upon any reasonable request.

(c) The Security Interest is granted as security only and shall not subject the Administrative Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.

(d) The Administrative Agent is authorized to file with the USPTO or the USCO (or any successor office) such documents as may be necessary or advisable for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest in United States Intellectual Property of each Grantor in which a security interest has been granted by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantor as debtors and the Administrative Agent as secured party.

(e) Notwithstanding anything to the contrary in the Loan Documents or the Pari Passu Indenture, none of the Grantors shall be required, nor is the Administrative Agent authorized, (i) to perfect the Security Interests granted by this Security Agreement (including Security Interests in Investment Property and Fixtures) by any means other than by (A) filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar central filing office) of the relevant State(s), and filings in the applicable real estate records with respect to any fixtures relating to Mortgaged Real Property, (B) filings in United States government offices with respect to Intellectual Property of any Grantor as expressly required elsewhere herein, (C) delivery to the Administrative Agent to be held in its possession of all Collateral consisting of Instruments as expressly required elsewhere herein or (D) other methods expressly provided herein, (ii) except to the extent set forth in Section 3.03(g), to enter into any deposit account control agreement, securities account control agreement or any other control agreement with respect to any Deposit Account, Securities Account or any other Collateral that requires perfection by “control,” (iii) to take any action (other than the actions listed in clauses (i)(A) and (C) above) with respect to any assets located outside of the United States, (iv) to perfect in any assets subject to a certificate of title statute or (v) to deliver any Equity Interests except as expressly provided in Section 2.02.

SECTION 3.02 Representations and Warranties. Each Grantor jointly and severally represents and warrants, as to itself and the other Grantors, to the Administrative Agent and the Secured Parties that:

(a) Subject to Liens permitted by Section 7.01 of the Credit Agreement, each Grantor has good and valid rights in and title (except as otherwise permitted by the Loan Documents) to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Administrative Agent, for the benefit of the Secured Parties, the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained.

(b) The Perfection Certificate has been duly prepared, completed and executed and the information set forth therein is correct and complete in all material respects (except the information therein with respect to the exact legal name of each Grantor shall be correct and complete in all respects) as of the Closing Date. Subject to Section 3.01(e), the Uniform Commercial Code financing statements or other appropriate filings, recordings or registrations prepared by the Administrative Agent based upon the information provided to the Administrative Agent in the Perfection Certificate for filing in the applicable filing office (or specified by notice from the Borrower to the Administrative Agent after the Closing Date in the case of filings, recordings or registrations (other than filings required to be made in the USPTO and the USCO in order to perfect the Security Interest in Article 9 Collateral consisting of United States Patents, Trademarks and Copyrights), in each case, as required by Section 6.11 of the Credit Agreement), are all the filings, recordings and registrations that are necessary to establish a legal, valid and perfected security interest in favor of the Administrative Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code, and no further or subsequent filing, re-filing, recording, rerecording, registration or re-registration is necessary in any such jurisdiction, except as provided under applicable Law with respect to the filing of continuation statements.

(c) Each Grantor represents and warrants that short-form Intellectual Property Security Agreements containing a description of all Article 9 Collateral consisting of material United States registered Patents (and Patents for which United States registration applications are pending), United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights, respectively (other than, in each case, any Excluded Assets), have been delivered to the Administrative Agent for recording by the USPTO and the USCO pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable, (for the benefit of the Secured Parties) in respect of all Article 9 Collateral consisting of registrations and applications for Patents, Trademarks and Copyrights. To the extent a security interest may be perfected by filing, recording or registration in USPTO or USCO under U.S. federal intellectual property laws, then no further or subsequent filing, re-filing, recording, rerecording, registration or re-registration is necessary (other than (i) such filings and actions as are necessary to perfect

the Security Interest with respect to any Article 9 Collateral consisting of Patents, Trademarks and Copyrights (or registration or application for registration thereof) acquired or developed by any Grantor after the date hereof and (ii) the UCC financing and continuation statements contemplated in Section 3.02(b)).

(d) The Security Interest constitutes (i) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations and (ii) subject to the filings described in Section 3.02(b), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code. Subject to Section 3.01(e) of this Agreement, the Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral, other than (i) any statutory or similar Lien that has priority as a matter of Law and (ii) any Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement.

(e) The Article 9 Collateral is owned by the Grantors free and clear of any Lien, except for Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement. None of the Grantors has filed or consented to the filing of (i) any financing statement or analogous document under the Uniform Commercial Code or any other applicable Laws covering any Article 9 Collateral, (ii) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the USPTO or the USCO or (iii) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Liens expressly permitted pursuant to Section 7.01 of the Credit Agreement and assignments permitted by the Credit Agreement.

SECTION 3.03 Covenants.

(a) The Borrower agrees to notify the Administrative Agent in writing promptly, but in any event within 60 days (or such longer period as the Administrative Agent may agree in its reasonable discretion), after any change in (i) the legal name of any Grantor, (ii) the identity or type of organization or corporate structure of any Grantor, (iii) the jurisdiction of organization of any Grantor or (iv) the organizational identification number of such Grantor, if any.

(b) Subject to Section 3.01(e), each Grantor shall, at its own expense, upon the reasonable request of the Administrative Agent, take any and all commercially reasonable actions necessary to defend title to the Article 9 Collateral against all Persons and to defend the Security Interest of the Administrative Agent in the Article 9 Collateral and the priority thereof against any Lien not expressly permitted pursuant to Section 7.01 of the Credit Agreement;

provided that, nothing in this Agreement shall prevent any Grantor from discontinuing the operation or maintenance of any of its assets or properties if such discontinuance is (x) determined by such Grantor to be desirable in the conduct of its business and (y) permitted by the Credit Agreement.

(c) Subject to Section 3.01(e), each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Administrative Agent may from time to time reasonably request to better assure, preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing statements or other documents in connection herewith or therewith. If any amount payable under or in connection with any of the Article 9 Collateral that is in excess of \$3,000,000 shall be or become evidenced by any promissory note, other instrument or debt security, such note, instrument or debt security shall be promptly (and in any event within 30 days of its acquisition or such longer period as the Administrative Agent may agree in its reasonable discretion) pledged and delivered to the Administrative Agent, for the benefit of the Secured Parties, duly endorsed in a manner reasonably satisfactory to the Administrative Agent.

(d) At its option, the Administrative Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not permitted pursuant to Section 7.01 of the Credit Agreement, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or any other Loan Document and within a reasonable period of time after the Administrative Agent has requested that it do so, and each Grantor jointly and severally agrees to reimburse the Administrative Agent within 10 Business Days after demand for any payment made or any reasonable expense incurred by the Administrative Agent pursuant to the foregoing authorization; *provided, however*, the Grantors shall not be obligated to reimburse the Administrative Agent with respect to any Intellectual Property that any Grantor has failed to maintain or pursue, or otherwise allowed to lapse, terminate or be put into the public domain in accordance with Section 3.03(f)(iv). Nothing in this paragraph shall be interpreted as excusing any Grantor from the performance of, or imposing any obligation on the Administrative Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

(e) If at any time any Grantor shall take a security interest in any property of an Account Debtor or any other Person the value of which is in excess of \$3,000,000 to secure payment and performance of an Account, such Grantor shall promptly assign such security interest to the Administrative Agent for the benefit of the Secured Parties *provided* that, notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a grant of a security interest in any Excluded Assets. Such assignment need not be filed of public

record unless necessary to continue the perfected status of the security interest against creditors of and transferees from the Account Debtor or other Person granting the security interest.

(f) *Intellectual Property Covenants.*

(i) Other than to the extent not prohibited herein or in the Credit Agreement or with respect to registrations and applications no longer used or useful, except to the extent failure to act would not, as deemed by the applicable Grantor in its reasonable business judgment, reasonably be expected to have a Material Adverse Effect, with respect to registration or pending application of each item of its Intellectual Property for which such Grantor has standing to do so, each Grantor agrees to take, at its expense, all reasonable steps, including, without limitation, in the USPTO, the USCO and any other governmental authority located in the United States, to pursue the registration and maintenance of each Patent, Trademark, or Copyright registration or application now or hereafter included in the Intellectual Property of such Grantor that are not Excluded Assets.

(ii) Other than to the extent not prohibited herein or in the Credit Agreement, or with respect to registrations and applications no longer used or useful, or except as would not, as deemed by the applicable Grantor in its reasonable business judgment, reasonably be expected to have a Material Adverse Effect, no Grantor shall do or permit any act or knowingly omit to do any act whereby any of its Intellectual Property, excluding Excluded Assets, may lapse, be terminated, or become invalid or unenforceable or placed in the public domain (or in the case of a trade secret, become publicly known).

(iii) Other than as excluded or as not prohibited herein or in the Credit Agreement, or with respect to Patents, Copyrights or Trademarks which are no longer used or useful in the applicable Grantor's business operations, or except where failure to do so would not, as deemed by the applicable Grantor in its reasonable business judgment, reasonably be expected to have a Material Adverse Effect, each Grantor shall take all reasonable steps to preserve and protect each item of its Intellectual Property, including, without limitation, maintaining the quality of any and all products or services used or provided in connection with any of its Trademarks, consistent with the quality of the products and services as of the date hereof, and taking reasonable steps necessary to ensure that all licensed users of any of its Trademarks abide by the applicable license's terms with respect to standards of quality.

(iv) Notwithstanding any other provision of this Agreement, nothing in this Agreement or any other Loan Document prevents or shall be deemed to prevent any Grantor from disposing of, discontinuing the use or maintenance of, failing to pursue, or otherwise allowing to lapse, terminate or be put into the public domain, any of its Intellectual Property to the extent permitted by the Credit Agreement if such Grantor determines in its reasonable business judgment that such discontinuance is desirable in the conduct of its business.

(v) Within the same delivery period as required for the delivery of the annual Compliance Certificate required to be delivered under Section 6.02(a) of the Credit Agreement

the Borrower shall provide a list of any additional registrations of Intellectual Property owned by Grantors, or registered copyrights exclusively licensed to Grantors, not previously disclosed to the Administrative Agent including such information as is necessary for such Grantor to make appropriate filings in the USPTO and USCO.

(g) Blocked Accounts. To the extent a Grantor is required to enter into blocked account or “control” agreements under the ABL Facility, each such Grantor shall, within the time period required for entry into such blocked account or “control” agreements under the ABL Facility, enter into a blocked account or “control” agreement in favor of the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, with respect to any deposit account or securities account (each, a “**Blocked Account**”) for which such Grantor is required to enter into such blocked account or “control” agreement pursuant to the ABL Facility. The Administrative Agent hereby agrees that it will not deliver a notice exercising exclusive control over any Blocked Account except after the occurrence and during the continuance of an Event of Default (subject, in any event, to the ABL Intercreditor Agreement).

ARTICLE IV

Remedies

SECTION 4.01 Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, it is agreed that the Administrative Agent shall have the right to exercise any and all rights afforded to a secured party with respect to the Secured Obligations, including the Guarantees, under the Uniform Commercial Code or other applicable Law and also may (i) require each Grantor to, and each Grantor agrees that it will at its expense and upon request of the Administrative Agent, promptly assemble all or part of the Collateral as directed by the Administrative Agent and make it available to the Administrative Agent at a place and time to be designated by the Administrative Agent that is reasonably convenient to both parties; (ii) occupy any premises owned or, to the extent lawful and permitted, leased by any of the Grantors where the Collateral or any part thereof is assembled or located for a reasonable period in order to effectuate its rights and remedies hereunder or under Law, without obligation to such Grantor in respect of such occupation; *provided* that the Administrative Agent shall provide the applicable Grantor with notice thereof prior to such occupancy; (iii) exercise any and all rights and remedies of any of the Grantors under or in connection with the Collateral, or otherwise in respect of the Collateral; *provided* that the Administrative Agent shall provide the applicable Grantor with notice thereof prior to such exercise; and (iv) subject to the mandatory requirements of applicable Law and the notice requirements described below, sell or otherwise dispose of all or any part of the Collateral securing the Secured Obligations at a public or private sale or at any broker’s board or on any securities exchange, for cash, upon credit or for future delivery as the Administrative Agent shall deem appropriate. The Administrative Agent shall be authorized at any such sale of securities (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale the Administrative Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at

any sale of Collateral 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 Law) all rights of redemption, stay and appraisal which such Grantor now has or may at any time in the future have under any Law now existing or hereafter enacted.

The Administrative Agent shall give the applicable Grantors 10 days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Administrative Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Administrative Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Administrative Agent may (in its sole and absolute discretion) determine. The Administrative Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Administrative Agent until the sale price is paid by the purchaser or purchasers thereof, but the Administrative Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by Law, private) sale made pursuant to this Agreement, any Secured Party may bid for or purchase, free (to the extent permitted by Law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released to the extent permitted by Law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Administrative Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Administrative Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Administrative Agent may proceed by a suit or suits at Law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 4.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its

equivalent in other jurisdictions.

Each Grantor irrevocably makes, constitutes and appoints the Administrative Agent (and all officers, employees or agents designated by the Administrative Agent) as such Grantor's true and lawful agent (and attorney-in-fact) during the continuance of an Event of Default (*provided* that the Administrative Agent shall provide the applicable Grantor with notice thereof prior to, to the extent reasonably practicable, or otherwise promptly after, exercising such rights), for the purpose of (i) making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies if insurance, (ii) making all determinations and decisions with respect thereto and (iii) obtaining or maintaining the policies of insurance required by Section 6.07 of the Credit Agreement or to pay any premium in whole or in part relating thereto. All sums disbursed by the Administrative Agent in connection with this paragraph, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, within 10 days of demand, by the Grantors to the Administrative Agent and shall be additional Secured Obligations secured hereby.

SECTION 4.02 Application of Proceeds. The Administrative Agent shall apply the proceeds of any collection or sale of Collateral, including any Collateral consisting of cash as follows:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article II of the Credit Agreement) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts payable to the Secured Parties, ratably as between the Credit Agreement Secured Parties and the Pari Passu Secured Parties (without priority of any one over any other) in proportion to the unpaid amounts of Credit Agreement Obligations and Pari Passu Obligations which such proceeds applies (i) as among the Pari Passu Secured Parties, to such Secured Parties in proportion to the unpaid amounts thereof and (ii) as among the Credit Agreement Secured Parties, as set forth in Section 8.03 of the Credit Agreement; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

The Administrative Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Administrative Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Administrative Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Administrative Agent or such

officer or be answerable in any way for the misapplication thereof.

The Administrative Agent shall have no liability to any of the Secured Parties for actions taken in reliance on information supplied to it as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the Secured Obligations, *provided* that nothing in this sentence shall prevent any Grantor from contesting any amounts claimed by any Secured Party in any information so supplied. All distributions made by the Administrative Agent pursuant to this Section 4.02 shall be (subject to any decree of any court of competent jurisdiction) final (absent manifest error) and the Administrative Agent shall have no duty to inquire as to the application by the Pari Passu Trustee of any amounts distributed to the Pari Passu Trustee.

If, despite the provisions of this Agreement, any Secured Party shall receive any payment or other recovery in excess of its portion of payments on account of the Secured Obligations to which it is then entitled in accordance with this Agreement, such Secured Party shall hold such payment or other recovery in trust for the benefit of all Secured Parties hereunder for distribution in accordance with this Section 4.02.

SECTION 4.03 Grant of License to Use Intellectual Property. For the exclusive purpose of enabling the Administrative Agent to exercise rights and remedies under this Agreement at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies at any time after and during the continuance of an Event of Default, each Grantor hereby grants to the Administrative Agent a non-exclusive, royalty-free, limited license (until the termination or cure of the Event of Default) for cash, upon credit or for future delivery as the Administrative Agent shall deem appropriate to use, license or sublicense any of the Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof; *provided, however*, that all of the foregoing rights of the Administrative Agent to use such licenses, sublicenses and other rights, and (to the extent permitted by the terms of such licenses and sublicenses) all licenses and sublicenses granted thereunder, shall expire immediately upon the termination or cure of all Events of Default and shall be exercised by the Administrative Agent solely during the continuance of an Event of Default and upon 10 Business Days' prior written notice to the applicable Grantor, and nothing in this Section 4.03 shall require Grantors to grant any license that is prohibited by any rule of law, statute or regulation, or is prohibited by, or constitutes a breach or default under or results in the termination of any contract, license, agreement, instrument or other document evidencing, giving rise to or theretofore granted, to the extent permitted by the Credit Agreement, with respect to such property or otherwise unreasonably prejudices the value thereof to the relevant Grantor; *provided, further*, that any such license and any such license granted by the Administrative Agent to a third party shall include reasonable and customary terms and conditions necessary to preserve the existence, validity and value of the affected Intellectual Property, including without limitation, provisions requiring the continuing confidential handling of trade secrets, requiring the use of appropriate notices and prohibiting the use of false notices, quality control and

inurement provisions with regard to Trademarks, patent designation provisions with regard to Patents, copyright notices and restrictions on decompilation and reverse engineering of copyrighted software (it being understood and agreed that, without limiting any other rights and remedies of the Administrative Agent under this Agreement, any other Loan Document or applicable Law, nothing in the foregoing license grant shall be construed as granting the Administrative Agent rights in and to such Intellectual Property above and beyond (x) the rights to such Intellectual Property that each Grantor has reserved for itself and (y) in the case of Intellectual Property that is licensed to any such Grantor by a third party, the extent to which such Grantor has the right to grant a sublicense to such Intellectual Property hereunder). For the avoidance of doubt, the use of such license by the Administrative Agent may be exercised, at the option of the Administrative Agent, only during the continuation of an Event of Default. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may also exercise the rights afforded under Section 4.01 of this Agreement with respect to Intellectual Property contained in the Article 9 Collateral.

ARTICLE V
Subordination

SECTION 5.01 Subordination.

(a) Notwithstanding any provision of this Agreement to the contrary, all rights of the Grantors to indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to the payment in full in cash of the Secured Obligations. No failure on the part of the Borrower or any Grantor to make the payments required under applicable law or otherwise shall in any respect limit the obligations and liabilities of any Grantor with respect to its obligations hereunder, and each Grantor shall remain liable for the full amount of the obligations of such Grantor hereunder.

(b) Each Grantor hereby agrees that upon the occurrence and during the continuance of an Event of Default and after notice from the Administrative Agent, all Indebtedness owed to it by any other Grantor shall be fully subordinated to the payment in full in cash of the Secured Obligations.

ARTICLE VI

Miscellaneous

SECTION 6.01 Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 10.02 of the Credit Agreement. All communications and notices hereunder to the Borrower or any other Grantor shall be given to it in care of the Borrower as provided in Section 10.02 of the Credit Agreement. With respect to the Pari Passu Obligations: (i) any notice to the Pari Passu Trustee may be made to its address as set forth in the most recent copy of the Pari Passu Indenture provided to the Administrative Agent by the Borrower and (ii) notice to any Pari Passu

Trustee shall be deemed sufficient notice to the Pari Passu Holders for all purposes hereunder.

SECTION 6.02 Waivers; Amendment.

(a) No failure or delay by any Secured Party in exercising any right, remedy, power or privilege hereunder or under any other Loan Document or under any Pari Passu Indenture, as applicable, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges of the Secured Parties herein provided, and provided under each other Loan Document and the Pari Passu Indenture, are cumulative and are not exclusive of any rights, remedies, powers and privileges provided by Law. No waiver of any provision of this Agreement or consent to any departure by any Grantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 6.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or the provision of services under Term Loan Secured Hedge Agreements shall not be construed as a waiver of any Default, regardless of whether any Secured Party may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Grantor or Grantors with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 10.01 of the Credit Agreement; *provided, however*, that the requisite written consent of the Pari Passu Holders and/or the Pari Passu Trustee under the Pari Passu Indenture shall be required with respect to any release, waiver, amendment or other modification of this Agreement that would materially and adversely affect the rights of the Pari Passu Holders to equally and ratably share in the security provided for herein with respect to the Collateral. Except as set forth in this Section 6.02, neither the Pari Passu Holders nor any Pari Passu Trustee shall have any rights to approve any release, waiver, amendment, modification, charge, discharge or termination with respect to this Agreement.

SECTION 6.03 Administrative Agent's Fees and Expenses; Indemnification.

(a) The parties hereto agree that the Administrative Agent shall be entitled to reimbursement of its reasonable out-of-pocket expenses incurred hereunder and indemnity for its actions in connection herewith as provided in Sections 10.04 and 10.05 of the Credit Agreement.

(b) Any such amounts payable as provided hereunder shall be additional Secured Obligations secured hereby and by the other Collateral Documents. The provisions of this Section 6.03 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Loan Document or the Pari Passu Indenture, the consummation of

the transactions contemplated hereby, the repayment of any of the Secured Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document or the Pari Passu Indenture, or any investigation made by or on behalf of the Administrative Agent or any other Secured Party. All amounts due under this Section 6.03 shall be payable within 30 days of written demand therefor.

SECTION 6.04 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 6.05 Survival of Agreement. All covenants, agreements, representations and warranties made by the Grantors hereunder and in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the Secured Parties and shall survive the execution and delivery of the Loan Documents and the making of any Loans and the provision of services under Term Loan Secured Hedge Agreements, regardless of any investigation made by any Secured Party or on its behalf and notwithstanding that any Secured Party may have had notice or knowledge of any Default at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect as long as this Agreement has not been terminated or released pursuant to Section 6.11 below.

SECTION 6.06 Counterparts; Effectiveness; Several Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by facsimile or other electronic communication of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement. This Agreement shall become effective as to any Grantor when a counterpart hereof executed on behalf of such Grantor shall have been delivered to the Administrative Agent and a counterpart hereof shall have been executed on behalf of the Administrative Agent, and thereafter shall be binding upon such Grantor and the Administrative Agent and their respective permitted successors and assigns, and shall inure to the benefit of such Grantor, the Administrative Agent and the other Secured Parties and their respective permitted successors and assigns, except that no Grantor shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

SECTION 6.07 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 6.08 Governing Law; Jurisdiction; Venue; Waiver of Jury Trial;

Consent to Service of Process.

(a) The terms of Sections 10.15 and 10.16 of the Credit Agreement with respect to governing law, submission of jurisdiction, venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

(b) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 6.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Law.

SECTION 6.09 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 6.10 Security Interest Absolute. To the extent permitted by Law, all rights of the Administrative Agent hereunder, the Security Interest, the grant of a security interest in the Collateral and all obligations of each Grantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document or the Pari Passu Indenture, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or the Pari Passu Indenture or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement.

SECTION 6.11 Termination or Release.

(a) This Agreement, the Security Interest and all other security interests granted hereby shall terminate with respect to all Secured Obligations and any Liens arising therefrom shall be automatically released upon termination of the Aggregate Commitments and payment in full of all Credit Agreement Obligations (other than (i) obligations and liabilities under Term Loan Secured Hedge Agreements as to which arrangements satisfactory to the applicable Hedge Bank shall have been made and (ii) contingent obligations not yet accrued and payable); *provided* that at any time prior to such termination, the Security Interest and all other security interests granted hereby shall terminate with respect to all Pari Passu Obligations and any Liens arising therefrom with respect to such Pari Passu Obligations shall be automatically released upon the occurrence of any of the following: (w) Pari Passu Obligations no longer being required to be secured hereby pursuant to the Pari Passu Indenture as a result of the release of the Collateral by the Administrative Agent as permitted hereunder and under the Credit Agreement, (x) the Pari Passu Obligations having been repaid in full in cash, (y) the Pari Passu Indenture

having been amended to no longer require that the Pari Passu Obligations be secured on an equal and ratable basis with the Credit Agreement Obligations or (z) the Pari Passu Indenture having been amended to increase the obligation of the Borrower or any Subsidiary Party to grant a security interest in any Collateral.

(b) A Subsidiary Party shall automatically be released from its obligations hereunder and the Security Interest in the Collateral of such Subsidiary Party shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Subsidiary Party ceases to be a Subsidiary Guarantor or becomes an Excluded Subsidiary; *provided* that the Required Lenders shall have consented to such transaction (if and to the extent required by the Credit Agreement) and the terms of such consent did not provide otherwise; *provided further*, that no Subsidiary Party shall be released as provided in this paragraph if such Subsidiary Party continues to be a guarantor in respect of the Senior Notes, any Indebtedness incurred pursuant to Section 7.03(r), any Permitted First Priority Refinancing Debt, any Permitted Junior Priority Refinancing Debt, any Permitted Unsecured Refinancing Debt, any Junior Financing or any Permitted Refinancing of any of the foregoing.

(c) Upon any sale or transfer by any Grantor of any Collateral that is permitted under the Credit Agreement (other than a sale or transfer to another Loan Party), or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Section 10.01 of the Credit Agreement or upon any Collateral constituting an Excluded Asset, the security interest in such Collateral shall be automatically released.

(d) In connection with any termination or release pursuant to paragraph (a), (b) or (c) of this Section 6.11, the Administrative Agent shall execute and deliver to any Grantor, at such Grantor's expense, all documents that such Grantor shall reasonably request to evidence such termination or release and shall perform such other actions reasonably requested by such Grantor to effect such release, including delivery of certificates, securities and instruments. Any execution and delivery of documents pursuant to this Section 6.11 shall be without recourse to or warranty by the Administrative Agent.

SECTION 6.12 Additional Grantors. Pursuant to Section 6.11 of the Credit Agreement, certain additional Restricted Subsidiaries of the Grantors may be required to enter in this Agreement as Grantors. Upon execution and delivery by the Administrative Agent and a Restricted Subsidiary of a Security Agreement Supplement, such Restricted Subsidiary shall become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of any such instrument shall not require the consent of any other Grantor hereunder. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Agreement.

SECTION 6.13 Administrative Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Administrative Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing

any instrument that the Administrative Agent may deem necessary or advisable to accomplish the purposes hereof at any time after and during the continuance of an Event of Default, which appointment is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, the Administrative Agent shall have the right, upon the occurrence and during the continuance of an Event of Default and notice by the Administrative Agent to the applicable Grantor of the Administrative Agent's intent to exercise such rights, with full power of substitution either in the Administrative Agent's name or in the name of such Grantor (a) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral; (c) to sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral; (d) to send verifications of Accounts Receivable to any Account Debtor; (e) to commence and prosecute any and all suits, actions or proceedings at Law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral; (f) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; (g) to notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Administrative Agent; and (h) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Administrative Agent were the absolute owner of the Collateral for all purposes; *provided* that nothing herein contained shall be construed as requiring or obligating the Administrative Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Administrative Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Administrative Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence, bad faith, or willful misconduct or that of any of their Affiliates, directors, officers, employees, counsel, agents or attorneys-in-fact, in each case, as determined by a final non-appealable judgment of a court of competent jurisdiction.

SECTION 6.14 General Authority of the Administrative Agent. By acceptance of the benefits of this Agreement and any other Collateral Documents, each Secured Party (whether or not a signatory hereto) shall be deemed irrevocably (a) to consent to the appointment of the Administrative Agent as its agent hereunder and under such other Collateral Documents, (b) to confirm that the Administrative Agent shall have the authority to act as the exclusive agent of such Secured Party for the enforcement of any provisions of this Agreement and such other Collateral Documents against any Grantor, the exercise of remedies hereunder or thereunder and the giving or withholding of any consent or approval hereunder or thereunder relating to any Collateral or any Grantor's obligations with respect thereto, (c) to agree that it shall not take any action to enforce any provisions of this Agreement or any other Collateral Document against any Grantor, to exercise any remedy hereunder or thereunder or to give any consents or approvals hereunder or thereunder except as expressly provided in this Agreement or any other Collateral

Document and (d) to agree to be bound by the terms of this Agreement and any other Collateral Documents.

SECTION 6.15 Administrative Agent and the Pari Passu Secured Parties.

(a) The obligations of the Administrative Agent to the Pari Passu Secured Parties hereunder and under the other Collateral Documents shall be limited solely to (i) holding the Collateral for the benefit of the Pari Passu Secured Parties for so long as (A) any Credit Agreement Obligations remain outstanding and (B) any Pari Passu Obligations are secured by such Collateral and (ii) distributing any proceeds received by the Administrative Agent from the sale, collection or realization of the Collateral to the Pari Passu Secured Parties in respect of the Pari Passu Obligations in accordance with the terms of this Agreement. Neither the Pari Passu Holders nor the Pari Passu Trustee shall be entitled to exercise (or direct the Administrative Agent to exercise) any rights or remedies hereunder with respect to the Pari Passu Obligations, including without limitation the right to enforce the security interest in the Collateral, request any action, institute proceedings, give any instructions, make any election, give any notice to account debtors, make collections, sell or otherwise foreclose on any portion of the Collateral or execute any amendment, supplement, or acknowledgment hereof or of any other Collateral Document. This Agreement shall not create any liability of the Administrative Agent or the Credit Agreement Secured Parties to any of the Pari Passu Secured Parties by reason of actions taken with respect to the creation, perfection or continuation of the security interest on the Collateral, actions with respect to the occurrence of an Event of Default, actions with respect to the foreclosure upon, sale, release, or depreciation of, or failure to realize upon, any of the Collateral or action with respect to the collection of any claim for all or any part of the Obligations from any account debtor, guarantor or any other party or the valuation, use or protection of the Collateral. By acceptance of the benefits under this Agreement and the other Collateral Documents, the Pari Passu Secured Parties and Pari Passu Trustee will be deemed to have acknowledged and agreed that the provisions of the preceding sentence are intended to induce the Lenders to permit such Persons to be Secured Parties under this Agreement and certain of the other Collateral Documents and are being relied upon by the Lenders as consideration therefor. The Administrative Agent shall not be required to ascertain or inquire as to the performance by the Borrower or any other obligor of the Pari Passu Obligations.

(b) Notwithstanding anything to the contrary herein, nothing in this Agreement shall or shall be construed to (i) result in the security interest in the Collateral securing the Pari Passu Obligations to be less than equally and ratably secured with the Credit Agreement Obligations pursuant to the Pari Passu Indenture to the extent required thereby or (ii) modify or affect the rights of the Pari Passu Secured Parties to receive the pro rata share specified in Section 4.02 of any proceeds of any collection or sale of Collateral.

(c) The parties hereto agree that the Pari Passu Obligations and the Credit Agreement Obligations are, and will be, equally and ratably secured with each other by the Liens on the Collateral, and that it is their intention to give full effect to the equal and ratable provisions of the Pari Passu Indenture, as in effect on the date hereof. To the extent that the rights and benefits herein or in any other Collateral Document conferred on the Pari Passu

Secured Parties shall be held to exceed the rights and benefits required so to be conferred by such provisions, such rights and benefits shall be limited so as to provide such Pari Passu Secured Parties only those rights and benefits that are required by such provisions. Any and all rights not herein expressly given to the Pari Passu Trustee are expressly reserved to the Administrative Agent and the Credit Agreement Secured Parties.

SECTION 6.16 Reasonable Care. The Administrative Agent is required to use reasonable care in the custody and preservation of any of the Collateral in its possession; *provided*, that the Administrative Agent shall be deemed to have used reasonable care in the custody and preservation of any of the Collateral, if such Collateral is accorded treatment substantially similar to that which the Administrative Agent accords its own property.

SECTION 6.17 Delegation; Limitation. The Administrative Agent may execute any of the powers granted under this Agreement and perform any duty hereunder either directly or by or through agents or attorneys-in-fact, and shall not be responsible for the gross negligence or willful misconduct of any agents or attorneys-in-fact selected by it with reasonable care and without gross negligence or willful misconduct.

SECTION 6.18 Reinstatement. The obligations of the Grantors under this Security Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Secured Obligations is rescinded or must be otherwise restored by any holder of any of the Secured Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

SECTION 6.19 Miscellaneous. The Administrative Agent shall not be deemed to have actual, constructive, direct or indirect notice or knowledge of the occurrence of any Event of Default unless and until the Administrative Agent shall have received a notice of Event of Default or a notice from the Grantor or the Secured Parties to the Administrative Agent in its capacity as Administrative Agent indicating that an Event of Default has occurred.

SECTION 6.20 ABL Intercreditor Agreement. Notwithstanding any provision to the contrary contained herein, the terms of this Agreement, the Liens created hereby and the rights and remedies of the Administrative Agent hereunder are subject to the terms of the ABL Intercreditor Agreement. The Pari Passu Trustee hereby authorizes the Administrative Agent to enter into the ABL Intercreditor Agreement. In the event of any conflict or inconsistency between the terms of this Agreement and the ABL Intercreditor Agreement, the terms of the ABL Intercreditor Agreement shall govern.

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

PRESTIGE BRANDS HOLDINGS, INC.

By: /s/ Ron Lombardi

Name: Ronald M. Lombardi
Title: Chief Financial Officer

PRESTIGE BRANDS, INC.

By: /s/ Ron Lombardi

Name: Ronald M. Lombardi
Title: Chief Financial Officer

BLACKSMITH BRANDS, INC.

MEDTECH HOLDINGS, INC.

MEDTECH PRODUCTS INC.

PRESTIGE BRANDS HOLDINGS, INC., a

Virginia Corporation

PRESTIGE BRANDS INTERNATIONAL, INC.

PRESTIGE PERSONAL CARE HOLDINGS, INC.

PRESTIGE PERSONAL CARE, INC.

PRESTIGE SERVICES CORP.

THE CUTEX COMPANY

THE DENOREX COMPANY

THE SPIC AND SPAN COMPANY,

as Grantors

By: /s/ Ron Lombardi

Name: Ronald M. Lombardi
Title: Chief Financial Officer

CITIBANK, N.A., as Administrative Agent

By: /s/ Caesar Wyszomirski

Name: Caesar Wyszomirski

Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,

as Pari Passu Trustee

By: Raymond S. Haverstock

Name: Raymond S. Haverstock

Title: Vice President

\$50,000,000

ABL CREDIT AGREEMENT

Dated as of January 31, 2012

Among

PRESTIGE BRANDS HOLDINGS, INC.,
as Holdings,

PRESTIGE BRANDS, INC.,
as the Borrower,

THE GUARANTORS PARTY HERETO FROM TIME TO TIME

CITIBANK, N.A.,
as Administrative Agent,

CITIBANK, N.A.,
as L/C Issuer and Swing Line Lender,

and

THE OTHER LENDERS PARTY HERETO FROM TIME TO TIME

CITIGROUP GLOBAL MARKETS INC.,
MORGAN STANLEY SENIOR FUNDING, INC. and
RBC CAPITAL MARKETS
as Joint Lead Arrangers and Joint Bookrunners,

MORGAN STANLEY SENIOR FUNDING, INC.,
as Syndication Agent

and

RBC CAPITAL MARKETS¹,
as Documentation Agent

¹ RBC Capital Markets is a marketing name for the investment banking activities of the Royal Bank of Canada.

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M Form Letter of Credit Report
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O Borrowing Base Certificate

ABL CREDIT AGREEMENT

This ABL CREDIT AGREEMENT is entered into as of January 31, 2012, among PRESTIGE BRANDS HOLDINGS, INC., a Delaware corporation (“**Holdings**”), PRESTIGE BRANDS, INC., a Delaware corporation (the “**Borrower**”), the other Guarantors party hereto from time to time, CITIBANK, N.A., as Administrative Agent, each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”), and CITIBANK, N.A., as L/C Issuer and Swing Line Lender.

PRELIMINARY STATEMENTS

Pursuant to (i) the Business Sale and Purchase Agreement, dated as of December 20, 2011 (as amended, supplemented or modified from time to time, the “**Acquisition Agreement**”), by and among Holdings, on the one hand, and GlaxoSmithKline LLC, a company incorporated under the laws of the state of Delaware, and the other sellers identified therein (collectively, the “**Seller**”), a Subsidiary Guarantor to whom Holdings will, at or prior to the Closing Date, assign its rights and obligations under the Acquisition Agreement (the “**BSPA Assignment**”) will acquire (the “**Acquisition**”) the Acquired Business and (ii) the Business Sale and Purchase Agreement, dated as of December 20, 2011 (as amended, supplemented or modified from time to time, the “**Split Brands Acquisition Agreement**”), by and among Holdings, on the one hand, and the Seller, Holdings has agreed to acquire (the “**Split Brands Acquisition**”) the Split Brands prior the Split Brands Cutoff Date (as defined herein).

The Borrower has requested that, substantially simultaneously with the consummation of the Acquisition, the Lenders extend credit to the Borrower in the form of a Revolving Credit Facility (as this and other capitalized terms used in these preliminary statements are defined in Section 1.01 below) in an initial aggregate principal amount of \$50,000,000. The Revolving Credit Facility may include one or more Letters of Credit from time to time and one or more Swing Line Loans from time to time.

The proceeds of (i) the proceeds of the issuance of the Senior Notes and (ii) the proceeds of the loans to be made under the Term Loan Credit Agreement on the Closing Date, will be used by the Borrower to pay the consideration in connection with the Acquisition and Transaction Expenses.

The applicable Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to so issue Letters of Credit, in each case, on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

“**ABL Last-Out Hedge Agreement**” means any Swap Contract permitted under Article VII that

is entered into by and between the Borrower or any Restricted Subsidiary and any Hedge Bank; *provided* that (a) such Person is designated a “Hedge Bank” with respect to such ABL Last-Out Hedge Agreement in a writing from the Borrower to the Administrative Agent, and (other than a Person already party hereto as a Lender) that delivers to the Administrative Agent a letter agreement reasonably satisfactory to it (i) appointing the Administrative Agent as its agent under the applicable Loan Documents and (ii) agreeing to be bound by Sections 10.05, 10.15 and 10.16 and Article IX as if it were a Lender, (b) such Swap Contract is designated in a writing from the Borrower to the Administrative Agent as an “ABL Last-Out Hedge Agreement” and (c) there shall not be more than \$25,000,000 in the aggregate of obligations in respect of ABL Last-Out Hedge Agreements and ABL Last-Out Treasury Services Agreements at any time outstanding.

“**ABL Last-Out Treasury Services Agreement**” means any agreement with respect to Cash Management Obligations permitted under Article VII that is entered into by and between the Borrower or any Restricted Subsidiary and any Cash Management Bank; *provided* that (a) such Person is designated a “Cash Management Bank” with respect to such ABL Last-Out Treasury Services Agreement in a writing from the Borrower to the Administrative Agent, and (other than a Person already party hereto as a Lender) that delivers to the Administrative Agent a letter agreement reasonably satisfactory to it (i) appointing the Administrative Agent as its agent under the applicable Loan Documents and (ii) agreeing to be bound by Sections 10.05, 10.15 and 10.16 and Article IX as if it were a Lender, (b) such ABL Secured Treasury Services Agreement is designated in a writing from the Borrower to the Administrative Agent as an “ABL Last-Out Treasury Services Agreement” and (c) there shall not be more than \$25,000,000 in the aggregate of obligations in respect of ABL Last-Out Treasury Services Agreements and ABL Last-Out Hedge Agreements at any time outstanding.

“**ABL Pari Passu Hedge Agreement**” means any Swap Contract permitted under Article VII that is entered into by and between the Borrower or any Restricted Subsidiary and any Person that is a Lender or an Affiliate of a Lender at the time such Swap Contract is entered into (any such Person, a “**Hedge Bank**”); *provided* that (a) such Person is designated a “Hedge Bank” with respect to such ABL Pari Passu Hedge Agreement in a writing from the Borrower to the Administrative Agent, and (other than a Person already party hereto as a Lender) that delivers to the Administrative Agent a letter agreement reasonably satisfactory to it (i) appointing the Administrative Agent as its agent under the applicable Loan Documents and (ii) agreeing to be bound by Sections 10.05, 10.15 and 10.16 and Article IX as if it were a Lender, (b) such Swap Contract is designated in a writing from the Borrower to the Administrative Agent as an “ABL Pari Passu Hedge Agreement” and (c) immediately after entering into any ABL Pari Passu Hedge Agreement, the aggregate outstanding amount of Total Outstandings shall not exceed the Line Cap at such time (after giving effect to any adjustment to Reserves reflecting such ABL Pari Passu Hedge Agreement).

“**ABL Pari Passu Treasury Services Agreement**” means any agreement with respect to Cash Management Obligations permitted under Article VII that is entered into by and between the Borrower or any Restricted Subsidiary and any Person that is a Lender or an Affiliate of a Lender at the time such agreement is entered into (any such Person, a “**Cash Management Bank**”); *provided* that (a) such Person is designated a “Cash Management Bank” with respect to such ABL Pari Passu Treasury Services Agreement in a writing from the Borrower to the Administrative Agent, and (other than a Person already party hereto as a Lender) that delivers to the Administrative Agent a letter agreement reasonably satisfactory to it (i) appointing the Administrative Agent as its agent under the applicable Loan Documents and (ii) agreeing to be bound by Sections 10.05, 10.15 and 10.16 and Article IX as if it were a Lender, (b) such ABL Secured Treasury Services Agreement is designated in a writing from the Borrower

to the Administrative Agent as an “ABL Pari Passu Treasury Services Agreement” and (c) immediately after entering into any ABL Pari Passu Treasury Services Agreement, the aggregate outstanding amount of Total Outstandings shall not exceed the Line Cap at such time (after giving effect to any adjustment to Reserves reflecting such ABL Pari Passu Treasury Services Agreement).

“**ABL Priority Collateral**” has the meaning assigned to such term in the Term Loan Intercreditor Agreement.

“**ABL Secured Hedge Agreement**” means an ABL Pari Passu Hedge Agreement or an ABL Last-Out Hedge Agreement, as the context may require.

“**ABL Secured Treasury Services Agreement**” means an ABL Pari Passu Treasury Services Agreement or an ABL Last-Out Treasury Services Agreement.

“**Account**” means, individually and collectively, any “Account” referred to in the Security Agreement.

“**Account Debtor**” means any Person obligated on an Account.

“**Account Reserves**” means any and all reserves which the Administrative Agent deems necessary, in its Permitted Discretion, to maintain (including, without limitation, Dilution Reserves, reserves for rebates, discounts, warranty claims and inventory returns and reserves for Permitted Liens on Eligible Accounts ranking prior to the Lien of the Administrative Agent for the benefit of the Secured Parties) with respect to the Eligible Accounts. The Administrative Agent may, from time to time, in its Permitted Discretion, adjust Account Reserves used in computing the Borrowing Base upon not less than three (3) Business Days’ prior written notice to the Borrower (during which period the Administrative Agent shall be available to discuss any such proposed adjustments with the Borrower during normal business hours upon reasonable notice).

“**Acquired Business**” means the Business (as defined in the Acquisition Agreement (as in effect on December 20, 2011)).

“**Acquired Business Annual Financial Statements**” means the audited statements of net assets to be sold of the Acquired Business as of December 31, 2010, 2009 and 2008, and related statements of revenues and direct operating expenses of the Acquired Business for the fiscal years then ended.

“**Acquired Business Unaudited Financial Statements**” means the unaudited statements of net assets to be sold and related statements of revenues and direct operating expenses of the Acquired Business for the nine month period ended September 30, 2011 and the prior comparative period.

“**Acquisition**” has the meaning specified in the preliminary statements to this Agreement.

“**Acquisition Agreement**” has the meaning specified in the preliminary statements to this Agreement.

“**Additional Lender**” has the meaning set forth in Section 2.14(c).

“**Adjustment Date**” has the meaning set forth in the definition of Applicable Rate.

“**Administrative Agent**” means Citi, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

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

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

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Agent Parties**” has the meaning set forth in Section 10.02(b).

“**Agent-Related Persons**” means the Agents, together with their respective Affiliates, officers, directors, employees, partners, agents, advisors and other representatives.

“**Agents**” means, collectively, the Administrative Agent, the Syndication Agent, the Documentation Agent, the Arrangers and the Bookrunners.

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this Credit Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

“**All-In Yield**” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, or otherwise; *provided that* OID and upfront fees shall be equated to interest rate assuming a 4 year life to maturity (or, if less, the stated life to maturity at the time of its incurrence of the applicable Indebtedness); *provided, further,* that “All-In Yield” shall not include arrangement fees, structuring fees, commitment fees, underwriting fees or other fees not paid to all Lenders of such Indebtedness.

“**Applicable ECF Percentage**” means, for any Excess Cash Flow Period, (a) 50% if the Consolidated First Lien Net Leverage Ratio as of the last day of such Excess Cash Flow Period is greater than 3.00:1.00, (b) 25% if the Consolidated First Lien Net Leverage Ratio as of the last day of such Excess Cash Flow Period is less than or equal to 3.00:1.00 and greater than 2.50:1.00 and (c) 0% if the Consolidated First Lien Net Leverage Ratio as of the last day of such Excess Cash Flow Period is less than or equal to 2.50:1.00.

“**Applicable Rate**” means:

(a) from and after the Closing Date until (but excluding) April 1, 2012, the percentages set forth in Level I of the pricing grid below; and

(b) on the first day of each fiscal quarter of the Borrower thereafter (each, an “**Adjustment Date**”), commencing with the fiscal quarter of the Borrower beginning on April 1, 2012, the Applicable Rate shall be determined from the pricing grid below based upon average daily Excess Availability for the most recently ended three-month period (or, in the case of the fiscal quarter beginning on April 1, 2012, the period from the Closing Date until March 31, 2012) immediately preceding such Adjustment Date, as calculated by the Administrative Agent as of the last day of such three-month period.

Level	Average Daily Excess Availability	Eurocurrency Rate Applicable Rate	Base Rate Applicable Rate
I	Greater than 66.67% of Aggregate Commitments	1.75%	0.75%
II	Less than or equal to 66.67% of Aggregate Commitments but greater than 33.33% of Aggregate Commitments	2%	1%
III	Less than or equal to 33.33% of Aggregate Commitments	2.25%	1.25%

; provided that if a Borrowing Base Certificate is not delivered when due pursuant to Section 6.02(f), Level III shall apply until such time as such Borrowing Base Certificate is so delivered.

“**Appropriate Lender**” means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class, (b) with respect to Letters of Credit, (i) the relevant L/C Issuers and (ii) the Revolving Credit Lenders and (c) with respect to the Swing Line Facility, (i) the relevant Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

“**Approved Bank**” has the meaning set forth in clause (c) of the definition of “Cash Equivalents.”

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

“**Arrangers**” means Citigroup Global Markets Inc., Morgan Stanley Senior Funding, Inc. and RBC Capital Markets, each in its capacity as a joint lead arranger under this Agreement.

“**Assignees**” has the meaning set forth in Section 10.07(b).

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit E hereto.

“**Assignment Taxes**” has the meaning set forth in Section 3.01(b).

“**Attorney Costs**” means and includes all reasonable and documented fees, expenses and disbursements of any law firm or other external legal counsel.

“**Attributable Indebtedness**” means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Auto-Extension Letter of Credit**” has the meaning set forth in Section 2.03(b)(iii).

“**Base Rate**” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Citi as its “prime rate” and (c) the Eurocurrency Rate plus 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day). The “prime rate” is a rate set by Citi based upon various factors including Citi’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Citi shall take effect at the opening of business on the day specified in the public announcement of such change.

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

“**Blocked Account**” means any DDA subject to a Blocked Account Agreement.

“**Blocked Account Agreement**” has the meaning provided in Section 6.19(d)(ii)(B).

“**Bookrunner**” means each of Citigroup Global Markets Inc., Morgan Stanley Senior Funding, Inc. and RBC Capital Markets, each in its capacity as a joint bookrunner.

“**Borrower**” has the meaning specified in the introductory paragraph to this Agreement.

“**Borrower Materials**” has the meaning specified in Section 6.01.

“**Borrower Reports**” has the meaning specified in Section 9.13(b).

“**Borrowing**” means a Revolving Credit Borrowing or a Swing Line Borrowing, as the context may require.

“**Borrowing Base**” means, at any time, the sum of (a) the product of 85% multiplied by the face amount of the Eligible Accounts at such time, plus (b) the lesser of (i) the product of 75% multiplied by the Eligible Inventory at such time, valued at the lower of cost or market value, determined on a first-in-first-out basis and (ii) the product of 85% multiplied by the Net Orderly Liquidation Value identified in the most recent inventory appraisal ordered by the Administrative Agent multiplied by Eligible Inventory,

valued at the lower of cost or market value, determined on a first-in-first-out basis, at such time, minus (c) Reserves. For the avoidance of doubt, until the Administrative Agent shall have received appraisals of the Borrower's and the Subsidiary Guarantors' Inventory from an appraiser selected and engaged by the Administrative Agent, and prepared on a basis satisfactory to the Administrative Agent (such appraisals and updates to include, without limitation, information required by applicable law and regulations), Inventory shall not be included in the Borrowing Base. The Borrowing Base at any time shall be the Borrowing Base as reflected on the Borrowing Base Certificate most recently delivered to the Administrative Agent; *provided* that such Borrowing Base shall be reduced by Reserves maintained by the Administrative Agent in accordance with the definition of the term Reserves; *provided further* that, in addition, the Administrative Agent may from time to time review and upon not less than three (3) Business Days' prior written notice (except as otherwise provided in the definition of Reserves) to the Borrower (during which period the Administrative Agent shall be available to discuss any such proposed adjustments with the Borrower during normal business hours upon reasonable notice) adjust any calculation of the Borrowing Base on such Borrowing Base Certificate to the extent the calculation is not made in accordance with this Agreement.

"Borrowing Base Certificate" means a certificate, duly completed and signed by a Responsible Officer of the Borrower, in the form of Exhibit O, or such other form which is acceptable to the Administrative Agent in its reasonable discretion.

"BSPA Assignment" has the meaning specified in the preliminary statements to this Agreement.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York and, if such day relates to any Eurocurrency Rate Loan, means any such day that is also a London Banking Day.

"Canadian Dollar" means lawful money of Canada.

"Capital Expenditures" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases) by the Borrower and its Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries.

"Capitalized Lease Obligation" means, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

"Capitalized Leases" means all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

"Capitalized Software Expenditures" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements

that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

“**Cash Collateral**” has the meaning specified in Section 2.03(g).

“**Cash Collateral Account**” means a blocked account at Citi (or another commercial bank selected by the Administrative Agent) in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner satisfactory to the Administrative Agent.

“**Cash Collateralize**” has the meaning specified in Section 2.03(g).

“**Cash Dominion Period**” means (i) each Minimum Availability Period, (ii) each period during which an Event of Default under Section 8.01(a) or (f) shall have occurred and is continuing or (iii) each period commencing on the later of (A) the occurrence of an Event of Default under (x) Section 8.01(e) or (y) Section 8.01(c) (but in the case of Section 8.01(c), solely to the extent resulting from a breach of Section 6.01(a), 6.01(b), 6.02(f), 6.16, 6.17 or 6.18) or (z) Section 8.01(d) (but solely to the extent that such representation or warranty relates to a Borrowing Base Certificate delivered pursuant to Section 6.02(f)) and (B) the date on which the Administrative Agent or the Required Lenders have provided written notice to the Borrower of an election to commence a Cash Dominion Period as a result of such Event of Default, and ending on the date on which such Event of Default has been cured or waived.

“**Cash Equivalents**” means any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

- (a) Dollars, pounds sterling, euros or Canadian Dollars;
- (b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States or the United Kingdom having average maturities of not more than 24 months from the date of acquisition thereof; *provided* that the full faith and credit of the United States or the United Kingdom, as applicable, is pledged in support thereof;
- (c) time deposits or eurodollar time deposits with, insured certificates of deposit, bankers’ acceptances or overnight bank deposits of, or letters of credit issued by, any commercial bank that (i) is a Lender or (ii) (A) is organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development or is the principal banking Subsidiary of a bank holding company organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development and is a member of the Federal Reserve System, and (B) has combined capital and surplus of at least \$250,000,000 (any such bank in the foregoing clauses (i) or (ii) being an “**Approved Bank**”), in each case with maturities not exceeding 24 months from the date of acquisition thereof;
- (d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation (other than structured investment vehicles and other than corporations used in

structured financing transactions) rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody's, in each case with average maturities of not more than 24 months from the date of acquisition thereof;

(e) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower);

(f) repurchase obligations for underlying securities of the types described in clauses (b), (c) and (e) above entered into with any Approved Bank;

(g) securities with average maturities of 24 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(h) Investments (other than in structured investment vehicles and structured financing transactions) with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(i) securities with maturities of 12 months or less from the date of acquisition backed by standby letters of credit issued by any Approved Bank;

(j) instruments equivalent to those referred to in clauses (a) through (i) above denominated in euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction;

(k) Investments, classified in accordance with GAAP as Current Assets of the Borrower or any Restricted Subsidiary, in money market investment programs which are registered under the Investment Company Act of 1940 or which are administered by financial institutions having capital of at least \$250,000,000, and, in either case, the portfolios of which are limited such that substantially all of such Investments are of the character, quality and maturity described in clauses (a) through (i) of this definition; and

(l) investment funds investing at least 95% of their assets in securities of the types described in clauses (a) through (k) above.

"Cash Management Bank" has the meaning provided in the definition of "ABL Pari Passu Treasury Services Agreement".

"Cash Management Obligations" means obligations owed by the Borrower or any Restricted Subsidiary to any Cash Management Bank in respect of any overdraft and related liabilities arising from

treasury, depository and cash management services or any automated clearing house transfers of funds.

“**Cash Management System**” has the meaning provided in Section 6.19(d)(ii).

“**Casualty Event**” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“**CFC**” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“**Citi**” means Citibank, N.A., a national banking association, acting in its individual capacity, and its successors and assigns.

“**Change of Control**” shall be deemed to occur if:

(a) (i) any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date, but excluding any employee benefit plan of such person and its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), shall have, directly or indirectly, acquired beneficial ownership of Equity Interests representing 35% or more of the aggregate voting power represented by the issued and outstanding Equity Interests of Holdings or (ii) during each period of twelve consecutive months, individuals who, at the beginning of such period, constituted the board of directors (or similar governing body) of Holdings (together with any directors whose election by the board of directors of Holdings or whose nomination for election by the members of Holdings was approved by a vote of at least a majority of the directors (or members of a similar governing body) then still in office who either were directors at the beginning of such period or whose elections or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors (or members of a similar governing body) then in office;

(b) a “change of control” (or similar event) shall occur in any document pertaining to the Term Loan Credit Agreement, the Senior Notes or the Existing Notes or, in each case, any Permitted Refinancing thereof with an aggregate outstanding principal amount in excess of the Threshold Amount; or

(c) Holdings shall cease to own 100% of the Equity Interests of the Borrower.

“**Class**” (a) when used with respect to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Revolving Credit Commitments, Incremental Revolving Credit Commitments or Extended Revolving Credit Commitments of a given Revolver Extension Series and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Revolving Credit Loans, Incremental Revolving Loans or Revolving Credit Loans under Extended Revolving Credit Commitments of a given Revolver Extension Series. Revolving Credit Commitments and Extended Revolving Credit Commitments (and in each case, the Loans made pursuant to such Commitments) that have different terms and conditions shall be

construed to be in different Classes. Commitments (and, in each case, the Loans made pursuant to such Commitments) that have the same terms and conditions shall be construed to be in the same Class.

“**Closing Date**” means January 31, 2012.

“**Code**” means the U.S. Internal Revenue Code of 1986, and the United States Treasury Department regulations promulgated thereunder, as amended from time to time.

“**Coface Insurance Policy**” means the credit and political risk insurance provided by Coface North America insuring certain Accounts of the Borrower and its Subsidiaries against payment default.

“**Collateral**” means the “Collateral” as defined in the Security Agreement and all the “Collateral” or “Pledged Assets” or similar term as defined in any other Collateral Document and any other assets pledged pursuant to any Collateral Document.

“**Collateral Access Agreement**” means any landlord waiver or other agreement, in form and substance reasonably satisfactory to the Administrative Agent, between the Administrative Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any ABL Priority Collateral or any landlord of any Loan Party for any real property where any ABL Priority Collateral is located, which agreement or letter shall provide access rights, contain a waiver or subordination of all Liens or claims that the landlord, bailee or consignee may assert against the ABL Priority Collateral at that location, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

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

(a) the Administrative Agent shall have received each Collateral Document required to be delivered (i) on the Closing Date, pursuant to Section 4.01(a)(iv) and (ii) at such time as may be designated therein, pursuant to the Collateral Documents, Section 6.11, 6.13 or 6.19, subject, in each case, to the limitations and exceptions of this Agreement, duly executed by each Loan Party thereto;

(b) all Obligations shall have been unconditionally guaranteed by Holdings and each Restricted Subsidiary of the Borrower that is a wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) including those that are listed on Schedule I hereto (each, a “**Guarantor**”); *provided* that, in addition, notwithstanding anything to the contrary contained in this Agreement, any Subsidiary of the Borrower that is an obligor under the Existing Notes, any Indebtedness under Section 7.03(s) or (x) or any Junior Financing shall be a Guarantor hereunder for so long as it is an obligor under such Indebtedness;

(c) the Obligations and the Guaranty shall have been secured by a security interest (subject to Liens permitted by Section 7.01) in (i) all the Equity Interests of the Borrower and (ii) all Equity Interests of each Restricted Subsidiary that is a wholly owned Domestic Subsidiary (other than a Domestic Subsidiary described in the following clause (iii)(A) or that has no material assets other than Equity Interests (including any Indebtedness treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries (other than Material Foreign Subsidiaries) that are CFCs) that is directly owned by the Borrower or any Subsidiary Guarantor

and (iii) 65% of the issued and outstanding Equity Interests of (A) each Restricted Subsidiary that is a wholly owned Domestic Subsidiary that is directly owned by the Borrower or by any Subsidiary Guarantor and that has no material assets other than Equity Interests (including any Indebtedness treated as equity for U.S. federal income tax purposes) of one or more Material Foreign Subsidiaries that are CFCs and (B) each Restricted Subsidiary that is a wholly owned Material Foreign Subsidiary that is directly owned by the Borrower or by any Subsidiary Guarantor;

(d) except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest (to the extent such security interest may be perfected by delivering certificated securities or instruments, filing financing statements under the Uniform Commercial Code or making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office or, in the circumstances contemplated by Section 6.19, the entry into any control agreement required under the Security Agreement or any Blocked Account Agreement, or to the extent required in the Security Agreement (or any other Collateral Document) or by Mortgages referred to in clause (e) below) in substantially all tangible and intangible assets of the Borrower and each Guarantor (including, but not limited to, accounts, inventory, equipment, investment property, contract rights, applications and registrations of IP Rights filed in the United States, other general intangibles, Material Real Property and proceeds of the foregoing), in each case, with the priority required by the Collateral Documents, in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents; and

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property required to be delivered pursuant to Section 6.11 and Section 6.13 (the "**Mortgaged Properties**") duly executed and delivered by the applicable Loan Party, (ii) a title insurance policy for each Mortgaged Property available in each applicable jurisdiction (the "**Mortgage Policies**") insuring the Lien of each such Mortgage as a valid first priority (except as otherwise provided in the Term Loan Intercreditor Agreement) Lien on the property described therein, free of any other Liens except as expressly permitted by Section 7.01, together with such endorsements, coinsurance and reinsurance and in such amounts as the Administrative Agent may reasonably request, (iii) a completed Life-of-Loan Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each Loan Party relating thereto) and if any improvements on any Mortgaged Property are located within an area designated a "flood hazard area," evidence of such flood insurance as may be required under Section 6.07, (iv) ALTA surveys in form and substance reasonably acceptable to the Administrative Agent or such existing surveys together with no-change affidavits sufficient for the title company to remove all standard survey exceptions from the Mortgage Policies and issue the endorsements required in (ii) above, (v) copies of any existing abstracts and appraisals and (vi) such legal opinions and other documents as the Administrative Agent may reasonably request with respect to any such Mortgaged Property;

provided, however, that the foregoing definition shall not require and the Loan Documents shall not contain any requirements as to the creation or perfection of pledges of, security interests in, Mortgages on, or the obtaining of title insurance, surveys, abstracts or appraisals or taking other

actions with respect to any Excluded Assets.

The Administrative Agent may grant extensions of time for the perfection of security interests in, or the delivery of the Mortgages and the obtaining of title insurance and surveys with respect to, particular assets and the delivery of assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

Other than as contemplated by clause (k) of the definition of Eligible Accounts or clause (g) of the definition of Eligible Inventory, no actions in any non-U.S. jurisdiction or required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located, titled, registered or filed outside of the U.S. or to perfect such security interests (it being understood that, other than as contemplated by clause (k) of the definition of Eligible Accounts or clause (g) of the definition of Eligible Inventory, there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction).

“**Collateral Documents**” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages, Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 4.01(a)(iv), Section 6.11 or Section 6.13, the Term Loan Intercreditor Agreement and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“**Commitment**” means a Revolving Credit Commitment, Incremental Revolving Credit Commitment or Extended Revolving Credit Commitment of a given Revolver Extension Series, as the context may require.

“**Commitment Fee Rate**” means:

- (a) from and after the Closing Date until (but excluding) April 1, 2012, the percentages set forth in Pricing Level II of the grid below; and
- (b) from and after April 1, 2012, the percentage per annum set forth in the grid below (on the basis of actual days elapsed in a 360-day year)

of the average daily balance of the Unused Commitment, during the calendar quarter just ended (or relevant period with respect to the payment being made on the Maturity Date), as calculated by the Administrative Agent as of the last day of such three month period:

Pricing Level	Average Daily Balance of Unused Commitment	Unused Fee
I	Less than 50% of Aggregate Commitments	0.375%
II	Greater than or equal to 50%	0.5%

; provided that if a Borrowing Base Certificate is not delivered when due pursuant to Section 6.02(f), Pricing Level II shall apply until such time as such Borrowing Base Certificate is so delivered.

“**Committed Loan Notice**” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A hereto.

“**Company Annual Financial Statements**” means the audited consolidated balance sheets of Holdings as of March 31, 2011, 2010 and 2009, and the related consolidated statements of income, changes in equity and cash flows for Holdings for the fiscal years then ended.

“**Company Quarterly Financial Statements**” means the unaudited consolidated balance sheets and related consolidated statements of income, changes in equity and cash flows of Holdings for the most recent fiscal quarters (other than the fourth fiscal quarter of Holdings’ fiscal year) after the date of the balance sheet contained in the Company Annual Financial Statements and ended at least forty-five (45) days prior to the Closing Date.

“**Compensation Period**” has the meaning set forth in Section 2.12(c)(ii).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit D-1 hereto.

“**Concentration Account**” has the meaning provided in Section 6.19(d)(ii)(A).

“**Concentration Account Control Agreement**” has the meaning provided in Section 6.19(d)(ii)(B).

“**Confidential Disclosure Letter**” means the letter from the Borrower to the Lenders delivered on or prior to the date hereof.

“**Consolidated EBITDA**” means, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and, except with respect to clauses (viii) and (x) below, to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income, the sum of the following amounts for such period with respect to the Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities (whether amortized or immediately expensed),

(ii) provision for taxes based on income, profits or capital gains of the Borrower and the Restricted Subsidiaries, including, without limitation, federal, state, franchise and similar taxes and foreign withholding taxes paid or accrued during such

period including penalties and interest related to such taxes or arising from any tax examinations,

(iii) depreciation and amortization (including amortization of intangible assets, including Capitalized Software Expenditures),

(iv) (A) duplicative running costs, relocation costs or expenses, integration costs, transition costs, pre-opening, opening and consolidation costs for facilities, signing, retention and completion bonuses, costs incurred in connection with any strategic initiatives, costs incurred in connection with acquisitions and non-recurring product and intellectual property development, other business optimization expenses (including costs and expenses relating to business optimization programs and new systems design, retention charges, systems establishment costs and implementation costs), project start-up costs, severance and other restructuring charges representing cash items (including restructuring costs related to acquisitions and to closure of facilities, and excess pension charges); *provided* that the aggregate amount of all items added back pursuant to this clause (iv)(A) for any Test Period shall not exceed 15% of Consolidated EBITDA for such Test Period,

(B) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments, in each case in connection with acquisitions, and

(C) Transaction Expenses,

(v) the amount of any expense or reduction of Consolidated Net Income consisting of Restricted Subsidiary income attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary,

(vi) [Reserved],

(vii) any Equity Funded Employee Plan Costs,

(viii) (i) cost savings, operating expense reductions and synergies related to the Transactions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken (in the good faith determination of the Borrower) within 18 months after the Closing Date (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period) and (ii) cost savings, operating expense reductions and synergies related to mergers and other business combinations, acquisitions, divestitures, restructurings, cost savings initiatives and other similar initiatives and actions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken (in the good faith determination of the Borrower) (A) within 18 months after a merger or other business combination,

acquisition or divestiture is consummated or (B) within 12 months in the case of any other restructuring, cost savings initiative or other initiative or action (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that no cost savings, operating expense reductions and synergies shall be added pursuant to this clause (viii) to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, for such period,

(ix) any net loss from discontinued operations,

(x) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) below for any previous period and not added back,

(xi) non-cash expenses, charges and losses (including reserves, impairment charges or asset write-offs, losses from investments recorded using the equity method, stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable in the normal course or inventory; *provided* that if any non-cash charges referred to in this clause (xi) represents an accrual or reserve for potential cash items in any future period, (1) the Borrower may elect not to add back such non-cash charge in the current period and (2) to the extent the Borrower elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to such extent paid,

less (b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period), (ii) any net gain from discontinued operations and (iii) the amount of any minority interest income consisting of Restricted Subsidiary losses attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary; *provided* that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a)(xi)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received);

provided that:

(A) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA (x) currency translation gains and losses related to currency remeasurements of Indebtedness (including the net loss or gain (i) resulting from Swap Contracts

for currency exchange risk and (ii) resulting from intercompany indebtedness) and (y) all other foreign currency translation gains or losses to the extent such gains or losses are non-cash items,

(B) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any adjustments resulting from the application of FASB Accounting Standards Codification 815 and International Accounting Standard No. 39 and their respective related pronouncements and interpretations,

(C) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any income (loss) for such period attributable to the early extinguishment of (i) Indebtedness, (ii) obligations under any Swap Contracts or (iii) other derivative instruments.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement for any period that includes any of the fiscal quarters ended March 31, 2011, June 30, 2011 and September 30, 2011, Consolidated EBITDA for such fiscal quarters shall be \$50,883,000, \$57,045,000 and \$59,031,000, respectively, in each case, as may be subject to addbacks and adjustments (without duplication) pursuant to clauses (iv) (A) and (viii) above and Section 1.09(c) for the applicable Test Period. For the avoidance of doubt, Consolidated EBITDA shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

“Consolidated First Lien Net Debt” means, as of any date of determination, any Indebtedness described in clause (a) of the definition of “Consolidated Total Net Debt” outstanding on such date that is secured by a Lien on any asset or property of the Borrower or any Restricted Subsidiary but excluding any such Indebtedness (other than Fixed Asset Obligations) in which the applicable Liens are expressly subordinated or junior to the Liens securing the Obligations minus the lesser of (x) the aggregate amount of cash and Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(a), Section 7.01(p), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), and Section 7.01(hh) (to the extent related to Indebtedness incurred under Section 7.03(s) (only to the extent the Obligations are secured by such cash and Cash Equivalents)) and (y) \$75,000,000; *provided* that Consolidated First Lien Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated First Lien Net Debt until 3 Business Days after such amount is drawn and (ii) Unrestricted Subsidiaries; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated First Lien Net Debt.

“Consolidated First Lien Net Leverage Ratio” means, with respect to any Test Period or any other period of four consecutive fiscal quarters specified in this Agreement, the ratio of (a) Consolidated First Lien Net Debt as of the last day of such Test Period or four consecutive fiscal quarter period to (b) Consolidated EBITDA for such Test Period or four consecutive fiscal quarter period.

“Consolidated Fixed Charge Coverage Ratio” means the ratio, for any Test Period, of (a) Consolidated EBITDA for such Test Period minus the unfinanced portion of Capital Expenditures made by the Borrower and the Restricted Subsidiaries during such Test Period to (b) Consolidated Fixed Charges for such Test Period, all calculated for the Borrower and the Restricted Subsidiaries on a consolidated basis.

“**Consolidated Fixed Charges**” means, with reference to any Test Period, without duplication, Consolidated Interest Expense paid during such Test Period plus expense for taxes (plus, without duplication, any cash transferred by the Borrower or any Restricted Subsidiary to Holdings in such Test Period in order for Holdings to pay taxes) paid in cash during such Test Period plus Restricted Payments (other than refinancings of Indebtedness with the proceeds of a Permitted Refinancing) paid in cash during such Test Period pursuant to Section 7.06(g), all calculated for the Borrower and the Restricted Subsidiaries on a consolidated basis, *provided* that there shall be excluded from Consolidated Fixed Charges for any Test Period any of the foregoing items to the extent attributable to Unrestricted Subsidiaries for such Test Period and to the extent otherwise included in Consolidated Fixed Charges for such Test Period, except to the extent actually paid in cash by the Borrower or its Restricted Subsidiaries during such period (other than from dividends or other distributions from an Unrestricted Subsidiary).

“**Consolidated Interest Expense**” means, for any period, the sum, without duplication, of

(i) the cash interest expense (including that attributable to Capitalized Leases), net of cash interest income, of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs under Swap Contracts, and

(ii) any cash payments made during such period in respect of obligations referred to in clause (b) below relating to Funded Debt that were amortized or accrued in a previous period;

provided that there shall be excluded from Consolidated Interest Expense for any period:

(a) deferred financing costs, debt issuance costs, commissions, fees (including amendment and contract fees) and expenses and, in each case, the amortization thereof, and any other amounts of non-cash interest,

(b) the accretion or accrual of discounted liabilities and any prepayment premium or penalty during such period,

(c) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Contracts or other derivative instruments pursuant to FASB Accounting Standards Codification 815,

(d) any cash costs associated with breakage in respect of hedging agreements for interest rates,

(e) all non-recurring cash interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP,

(f) fees and expenses associated with the consummation of the Transactions,

(g) annual agency fees paid to (x) the Administrative Agent and (y) the Term

Agent,

(h) costs associated with obtaining Swap Contracts,

(i) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or, if applicable, purchase accounting in connection with the Transactions or any acquisition, and

(j) the cash interest expense (or income) of all Unrestricted Subsidiaries for such period to the extent otherwise included in Consolidated Interest Expense.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Interest Expense (i) for any period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense shall be an amount equal to actual Consolidated Interest Expense from the Closing Date through the date of determination multiplied by a fraction the numerator of which is 365 and the denominator of which is the number of days from the Closing Date through the date of determination and (ii) shall exclude the purchase accounting effects described in the last sentence of the definition of Consolidated Net Income.

“**Consolidated Net Income**” means, for any period, the net income (loss) of the Borrower and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided, however*, that, without duplication,

(a) any after-tax effect of extraordinary, non-recurring or unusual items (including gains or losses and all fees and expenses relating thereto) for such period shall be excluded,

(b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income shall be excluded,

(c) any fees and expenses incurred during such period (including, without limitation, any premiums, make-whole or penalty payments), or any amortization thereof for such period, in connection with any acquisition, investment, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument (in each case, including any such transaction consummated on or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt the effects of expensing all transaction related expenses in accordance with FASB Accounting Standards Codification 805 and gains or losses associated with FASB Accounting Standards Codification 460) shall be excluded,

(d) accruals and reserves that are established or adjusted within twelve months after the Closing Date that are so required to be established as a result of the Transactions (or within twelve months after the closing of any acquisition that are so required to be established as a result of such acquisition) in accordance with GAAP or changes as a result of adoption or modification of accounting policies in accordance with GAAP shall be excluded,

- (e) any net after-tax effect of gains or losses on disposed, abandoned or discontinued operations shall be excluded,
- (f) any net after-tax effect of gains or losses (less all fees, expenses and charges relating thereto) attributable to asset dispositions or abandonments or the sale or other disposition of any Equity Interests of any Person in each case other than in the ordinary course of business, as determined in good faith by the Borrower, shall be excluded,
- (g) the net income (loss) for such period of any Person that is not a Subsidiary of the Borrower, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income of the Borrower shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent subsequently converted into cash or Cash Equivalents) to the Borrower or a Restricted Subsidiary thereof in respect of such period,
- (h) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded,
- (i) any non-cash compensation charge or expense, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs or any other equity-based compensation shall be excluded, and any cash charges associated with the rollover, acceleration or payout of Equity Interests by management of the Borrower or any of its direct or indirect parents in connection with the Transactions, shall be excluded,
- (j) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 day period), shall be excluded,
- (k) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses with respect to liability or casualty events or business interruption shall be excluded,
- (l) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts

arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of Statement on Financial Accounting Standards Nos. 87, 106 and 112, and any other items of a similar nature, shall be excluded,

(m) the income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary of Borrower or is merged into or consolidated with Borrower or any of its Subsidiaries or that Person's assets are acquired by Borrower or any of its Restricted Subsidiaries shall be excluded (except to the extent required for any calculation of Consolidated EBITDA on a Pro Forma Basis in accordance with Section 1.09),

(n) solely for the purpose of determining the Cumulative Credit pursuant to clause (a) of the definition thereof, the income of any Restricted Subsidiary of Borrower that is not a Guarantor to the extent that the declaration or payment of dividends or similar distributions by that Restricted 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 Restricted Subsidiary (which has not been waived) shall be excluded, except (solely to the extent permitted to be paid) to the extent of the amount of dividends or other distributions actually paid to Borrower or any of its Restricted Subsidiaries that are Guarantors by such Person during such period in accordance with such documents and regulations.

There shall be excluded from Consolidated Net Income for any period the purchase accounting effects of adjustments in component amounts required or permitted by GAAP (including in the inventory, property and equipment, software, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) and related authoritative pronouncements (including the effects of such adjustments pushed down to the Borrower and the Restricted Subsidiaries), as a result of the Transactions, any acquisition constituting an Investment permitted under this Agreement consummated prior to or after the Closing Date, or the amortization or write-off of any amounts thereof For the avoidance of doubt, Consolidated Net Income shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

"Consolidated Secured Net Debt" means, as of any date of determination, any Indebtedness described in clause (a) of the definition of "Consolidated Total Net Debt" outstanding on such date that is secured by a Lien on any asset or property of the Borrower or any Restricted Subsidiary minus the lesser of (x) the aggregate amount of cash and Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(a), Section 7.01(p) and Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), and Section 7.01(hh) (to the extent related to Indebtedness incurred under Section 7.03(s) (to the extent the Obligations are secured by such cash and Cash Equivalents)) and (y) \$75,000,000; *provided* that Consolidated Secured Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Secured Net Debt until 3 Business Days after such amount is drawn and (ii) Unrestricted Subsidiaries; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Secured Net Debt.

"Consolidated Total Net Debt" means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated

basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with the Transactions or any acquisition constituting an Investment permitted under this Agreement) consisting of Indebtedness for borrowed money, Attributable Indebtedness, and debt obligations evidenced by promissory notes or similar instruments, minus (b) the lesser of (x) the aggregate amount of cash and Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Section 7.01(a), Section 7.01(p) and Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), and Section 7.01(hh) (to the extent related to Indebtedness incurred under Section 7.03(s) (only to the extent such Obligations are secured by such cash and Cash Equivalents)) and (y) \$75,000,000; *provided* that Consolidated Total Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Net Debt until 3 Business Days after such amount is drawn and (ii) Unrestricted Subsidiaries; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Total Net Debt.

“**Consolidated Working Capital**” means, with respect to the Borrower and its Restricted Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; *provided* that increases or decreases in Consolidated Working Capital shall be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent or (b) the effects of purchase accounting.

“**Contract Consideration**” has the meaning set forth in the definition of “Excess Cash Flow.”

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

“**Control**” has the meaning specified in the definition of “Affiliate.”

“**Credit Extension**” means each of the following: (a) the making of a Loan and (b) an L/C Credit Extension.

“**Cumulative Credit**” means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) the Cumulative Retained Excess Cash Flow Amount at such time, plus

(b) the cumulative amount of cash and Cash Equivalent proceeds from (i) the sale of Qualified Equity Interests of Holdings or Equity Interests of any direct or indirect parent of Holdings after the Closing Date and on or prior to such time (including upon exercise of warrants or options) (other than Excluded Contributions or any amount designated as a Cure Amount or used for Equity Funded Employee Plan Costs or proceeds used pursuant to clause (A) of Section 7.06(f)) which proceeds have been contributed as common equity to the capital of the Borrower and (ii) the Qualified Equity Interests of Holdings (or Equity Interests of any direct or indirect

parent of Holdings) (other than Excluded Contributions or any amount designated as a Cure Amount or used for Equity Funded Employee Plan Costs) issued upon conversion of Indebtedness (other than Indebtedness that is contractually subordinated to the Obligations) of the Borrower or any Restricted Subsidiary of the Borrower owed to a Person other than a Loan Party or a Restricted Subsidiary of a Loan Party not previously applied for a purpose (including a Cure Amount) other than use in the Cumulative Credit, plus

(c) 100% of the aggregate amount of contributions to the common capital of the Borrower received in cash and Cash Equivalents after the Closing Date (other than Excluded Contributions or any amount designated as a Cure Amount or used for Equity Funded Employee Plan Costs), plus

(d) 100% of the aggregate amount received by the Borrower or any Restricted Subsidiary of the Borrower in cash and Cash Equivalents from:

(A) the sale (other than to Holdings, the Borrower or any such Restricted Subsidiary) of the Equity Interests of an Unrestricted Subsidiary or any minority Investments, or

(B) any dividend or other distribution by an Unrestricted Subsidiary or received in respect of minority Investments, or

(C) any interest, returns of principal, repayments and similar payments by such Unrestricted Subsidiary or received in respect of any minority Investments;

provided that in the case of clauses (A), (B), and (C), in each case, to the extent that the Investment corresponding to the designation of such Subsidiary as an Unrestricted Subsidiary or any subsequent Investment in such Unrestricted Subsidiary or minority Investment, as applicable, was made in reliance on the Cumulative Credit pursuant to Section 7.02(c)(iii)(B)(y), 7.02(i)(iv)(2) or 7.02(n)(y), plus

(e) in the event any Unrestricted Subsidiary has been re-designated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary, the fair market value of the Investments of the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) so long as such Investments were originally made pursuant to Sections 7.02(c)(iii)(B)(y), 7.02(i)(iv)(2) or 7.02(n)(y), plus

(f) an amount equal to any returns in cash and Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Restricted Subsidiary in respect of any Investments made pursuant to Section 7.02(c)(iii)(B)(y), 7.02(i)(iv)(2) or 7.02(n)(y), minus

(g) any amount of the Cumulative Credit used to make Investments pursuant to Sections 7.02(c)(iii)(B)(y), 7.02(i)(iv)(2) or 7.02(n)(y) after the Closing Date and prior to such time, minus

(h) any amount of the Cumulative Credit used to pay dividends or make distributions pursuant to Section 7.06(f)(A) or 7.06(g) after the Closing Date and prior to such time, minus

(i) any amount of the Cumulative Credit used to make payments or distributions in respect of Junior Financings pursuant to Section 7.13 after the Closing Date and prior to such time.

“**Cumulative Retained Excess Cash Flow Amount**” means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to the aggregate cumulative sum of the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Closing Date and prior to such date.

“**Cure Amount**” has the meaning set forth in Section 8.04(a).

“**Cure Expiration Date**” has the meaning set forth in Section 8.04(a).

“**Current Assets**” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all assets (other than cash and Cash Equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current assets at such date of determination, other than amounts related to current or deferred Taxes based on income or profits (but excluding assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments).

“**Current Liabilities**” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current liabilities at such date of determination, other than (a) the current portion of any Indebtedness, (b) accruals of Consolidated Interest Expense (excluding Consolidated Interest Expense that is past due and unpaid), (c) accruals for current or deferred Taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves, (e) deferred revenue and (f) any Revolving Credit Exposure or Revolving Credit Loans.

“**DDA Control Agreement**” has the meaning provided in Section 6.19(d)(ii)(B).

“**DDAs**” means any checking or other demand deposit account maintained by the Loan Parties.

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

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

“**Default Rate**” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2.0% per annum; *provided* that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable

Rate) otherwise applicable to such Loan plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

“Defaulting Lender” means, subject to Section 2.17(b), any Lender that, as determined by the Administrative Agent (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of Protective Advances, L/C Obligations or Swing Line Loans, within one Business Day of the date required to be funded by it hereunder, (b) has notified the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations, or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

“Dilution Factors” means, without duplication, with respect to any period, the aggregate amount of all deductions, credit memos, returns, adjustments, allowances, bad debt write-offs and other non-cash credits which are recorded to reduce accounts receivable.

“Dilution Ratio” means, at any date, the amount (expressed as a percentage) equal to (a) the aggregate amount of the applicable Dilution Factors for the 12 most recently ended fiscal months divided by (b) total gross sales for the 12 most recently ended fiscal months.

“Dilution Reserve” means, at any date, the product of (a) the excess (if positive) of (i) the applicable Dilution Ratio minus (ii) 5.0% multiplied by (b) the Eligible Accounts of the Borrower and the Subsidiary Guarantors on such date.

“Discharge of Fixed Asset Obligations” has the meaning assigned to such term in the Term Loan Intercreditor Agreement.

“Disposition” or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments and the termination of all outstanding Letters of Credit (unless the Outstanding Amount of the L/C Obligations

related thereto has been Cash Collateralized, back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and other than as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments and the termination of all outstanding Letters of Credit (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized, back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer)), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Latest Maturity Date at the time of issuance of such Equity Interests; *provided* that if such Equity Interests are issued pursuant to a plan for the benefit of employees of Holdings (or any direct or indirect parent thereof), the Borrower or the Restricted Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by the Borrower or if its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“**Document**” has the meaning assigned to such term in the Security Agreement.

“**Documentation Agent**” means RBC Capital Markets, in its capacity as documentation agent under this Agreement.

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

“**Dollar Amount**” means with respect to any L/C Obligation (or any risk participation therein), the amount thereof.

“**Domestic Subsidiary**” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**Eligible Accounts**” means, at any time, the Accounts of the Borrower or any Subsidiary Guarantor which in accordance with the terms hereof are eligible as the basis for any Credit Extension hereunder. Eligible Accounts shall not include any Account:

- (a) which is not subject to a first priority perfected security interest in favor of the Administrative Agent (for the benefit of the Secured Parties);
- (b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent for the benefit of the Secured Parties, (ii) a Permitted Lien and (iii) Liens permitted hereunder pursuant to Section 7.01(hh);
- (c) (i) which is unpaid more than 90 days (or, in the case of customers that are covered under the Coface Insurance Policy, 120 days) after the date of the original invoice therefor or more than 60 days after the original due date, or (ii) which has been written off the books of the Borrower or any Subsidiary Guarantor or otherwise designated as uncollectible;

(d) which is owing by an Account Debtor for which more than 50% of the Accounts owing from such Account Debtor and its Affiliates are ineligible under clause (c) above;

(e) which is owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to the Borrower or any Subsidiary Guarantor exceeds (x) in the case of Wal-Mart Stores, Inc. and its Affiliates (i) to the extent such Account Debtor has an Investment Grade Rating at such time, 40%, (ii) to the extent such Account Debtor has a Speculative Grade Rating but not an Investment Grade Rating at such time, 35.0% and (iii) to the extent such Account Debtor does not have a Speculative Grade Rating at such time, 30.0% and (y) in the case of all other Account Debtors, (i) to the extent such Account Debtor has an Investment Grade Rating at such time, 20% and (ii) to the extent such Account Debtor does not have an Investment Grade Rating at such time, 10%, in each case of clauses (x) and (y) of the aggregate amount of Eligible Accounts of the Borrower or such Subsidiary Guarantor but only to the extent of such excess over the applicable threshold;

(f) except as otherwise agreed by the Administrative Agent, with respect to which any covenant, representation, or warranty contained in this Agreement or in the Security Agreement has been breached or is not true in any material respect;

(g) which (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation reasonably satisfactory to the Administrative Agent which has been sent to the Account Debtor, (iii) represents a progress billing, (iv) is contingent upon the Borrower's or any Subsidiary Guarantor's completion of any further performance, (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis or (vi) relates to payments of interest, but ineligibility shall be limited to the extent of such payments of interest;

(h) for which (i) the goods giving rise to such Account have not been shipped to the Account Debtor or (ii) the services giving rise to such Account have not been performed by the Borrower or the applicable Subsidiary Guarantor or if such Account was invoiced more than once (but ineligibility shall be limited to the extent of such additional invoices), unless, (A) in the case of clause (h)(i) preceding, the Account Debtor on such Account has instructed the Borrower or the applicable Subsidiary Guarantor in writing to deliver such goods to a designated area at or near the Borrower's or the applicable Subsidiary Guarantor's facility or otherwise store such goods for the account of such Account Debtor and has agreed, pursuant to the terms of the quotation or purchase order for such Account or by separate agreement, that such delivery or storage constitutes delivery of such goods by the Borrower, in any such case in form and substance reasonably satisfactory to the Administrative Agent;

(i) which is owed by an Account Debtor which has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up or voluntary or involuntary case under any Debtor Relief Laws unless the Administrative Agent shall have determined in its sole discretion to include such Accounts, (iv) admitted in writing its inability to pay its debts as they become due, (v) become insolvent or (vi) ceased operation of its business;

(j) which is owed by any Account Debtor which has sold all or substantially all of its assets;

(k) which is owed by an Account Debtor which (i) does not maintain an office in the U.S. or Canada (other than Quebec) or (ii) is not organized under applicable law of the U.S., any state of the U.S. or the District of Columbia, Canada or any province or other political subdivision of Canada (other than Quebec) unless, in either case, such Account is backed by a letter of credit reasonably acceptable to the Administrative Agent which is in the possession of, has been assigned to and is directly drawable by the Administrative Agent, and so long as, in the case of any Accounts located in Canada, the Borrower or the Subsidiary Guarantor holding such Account shall have (notwithstanding any other limitations in the Loan Documents) entered into or filed any Canadian documentation reasonably deemed necessary by the Administrative Agent in order to perfect its security interest in such Account or to enable the Administrative Agent to promptly foreclose thereon (in accordance with customary practice for lenders under similar facilities in Canada);

(l) except as otherwise agreed by the Administrative Agent, which is owed in any currency other than U.S. dollars;

(m) which is owed by (i) the government (or any department, agency, public corporation, or instrumentality thereof) of any country other than the U.S. unless such Account is backed by a letter of credit reasonably acceptable to the Administrative Agent which is in the possession of and directly drawable by the Administrative Agent or (ii) the government of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.), and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's reasonable satisfaction;

(n) which is owed by (i) any employee, officer, director, agent or direct stockholder of the Borrower or any Subsidiary Guarantor or (ii) any other Affiliate of the Borrower or any Subsidiary Guarantor;

(o) which is owed by an Account Debtor or any Affiliate of such Account Debtor to which the Borrower or any Subsidiary Guarantor is indebted, but only to the extent of such indebtedness or is subject to any security, deposit, progress payment, advance payment or deposit, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(p) which is subject to any counterclaim, deduction, defense, setoff or dispute but only to the extent of any such counterclaim, deduction, defense, setoff or dispute;

(q) which is evidenced by any promissory note, chattel paper, or instrument;

(r) with respect to which the Borrower or any Subsidiary Guarantor has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business, or any Account which was partially paid and the Borrower or such Subsidiary Guarantor created a new receivable for the unpaid portion of

such Account;

(s) which does not comply in all material respects with the requirements of all applicable laws and regulations, whether Canadian, provincial, Federal, state or local, but only to the extent such failure to comply would excuse the Account Debtor from payment with respect to such Account;

(t) which is for goods that have been sold under a purchase order or pursuant to the terms of a written contract or other written agreement, understanding or instrument that indicates or purports that any Person other than the Borrower or a Subsidiary Guarantor has an ownership interest in such goods, or which indicates any party other than the Borrower or a Subsidiary Guarantor as payee or remittance party;

(u) which was created on cash on delivery terms; or

(v) which the Administrative Agent in its Permitted Discretion otherwise determines to be ineligible, using standards of eligibility substantially consistent with those used to calculate the Borrowing Base in the Borrowing Base Certificate delivered on the Closing Date.

In determining the amount of an Eligible Account, the face amount of an Account may, in the Administrative Agent's Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that the Borrower or the applicable Subsidiary Guarantor may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by the Borrower or such Subsidiary Guarantor to reduce the amount of such Account.

Standards of eligibility may be made more restrictive (and such increased restrictiveness subsequently reversed in whole or in part) from time to time solely by the Administrative Agent in the exercise of its Permitted Discretion, with any such changes to be effective three (3) Business Days after delivery of written notice thereof to the Borrower and the Lenders (during which time the Administrative Agent shall be available to discuss any such proposed changes with the Borrower during normal business hours upon reasonable notice); *provided* that circumstances, conditions, events or contingencies arising on or prior to the Closing Date of which the Administrative Agent had actual knowledge on or prior to the Closing Date shall not be the basis for any increased restrictiveness unless the Administrative Agent had established such increased restrictiveness on the Closing Date, or such circumstances, conditions, events or contingencies shall have changed in a manner adverse in any material respect to the interests of the Administrative Agent or the Lenders since the Closing Date.

In addition to the foregoing limitations, at no time shall the face value of Accounts that would otherwise constitute Eligible Accounts of Account Debtors that either (A) are organized under the laws of Canada (or any province or other political subdivision thereof) or (B) have an office in Canada (or any province or political subdivision thereof) but not the United States, when combined with any Inventory (valued at the lower of cost or market value, determined on a first-in-first-out basis) located in Canada that would otherwise constitute Eligible Inventory, exceed, solely for the purposes of determining Eligible Accounts, \$15,000,000, and, for the avoidance of doubt, no such Accounts shall constitute Eligible

Accounts until the requirements of clause (k) of this definition shall have been complied with.

“**Eligible Assignee**” has the meaning set forth in Section 10.07(a)(i).

“**Eligible Inventory**” means, at any time, the Inventory of the Borrower or any Subsidiary Guarantor which in accordance with the terms hereof is eligible as the basis for any Credit Extension hereunder. Eligible Inventory shall not include any Inventory:

- (a) which is not subject to a first priority perfected Lien in favor of the Administrative Agent (for the benefit of the Secured Parties);
- (b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent for the benefit of the Secured Parties, (ii) a Permitted Lien and (iii) Liens permitted hereunder pursuant to Section 7.01(hh);
- (c) which is, in the Administrative Agent’s Permitted Discretion, slow moving, obsolete, unmerchantable, defective, unfit for sale or unacceptable due to age, type, category and/or quantity;
- (d) except as otherwise agreed by the Administrative Agent, with respect to which any covenant, representation, or warranty contained in this Agreement or the Security Agreement has been breached or is not true in any material respect and which does not conform in any material respect to all standards imposed by any Governmental Authority;
- (e) in which any Person other than the Borrower or a Subsidiary Guarantor shall (i) have any direct or indirect ownership, interest or title to such Inventory or (ii) be indicated on any purchase order or invoice with respect to such Inventory as having an interest therein;
- (f) which constitutes spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold goods, repossessed goods, defective or damaged goods, goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;
- (g) which is not located in the U.S. or Canada (so long as, in the case of any Inventory located in Canada, the Borrower or the Subsidiary Guarantor holding such Inventory shall have (notwithstanding any other limitations in the Loan Documents) entered into or filed any Canadian documentation reasonably deemed necessary by the Administrative Agent in order to perfect its security interest in such Inventory or to enable the Administrative Agent to promptly foreclose thereon (in accordance with customary practice for lenders under similar facilities in Canada)) or is in transit with a common carrier from vendors and suppliers; provided that up to \$7,500,000 of Inventory in transit of the Borrower and the Subsidiary Guarantors from vendors and suppliers may be included as eligible pursuant to this clause (g) so long as (i) the Administrative Agent shall have received (1) a true and correct copy of the bill of lading and other shipping documents for such Inventory, (2) evidence of satisfactory casualty insurance naming the Administrative Agent as loss payee and otherwise covering such risks as the Administrative Agent may reasonably request and (3) if the bill of lading is (A) non-negotiable and the inventory is in transit within the United States, a duly executed Collateral Access

Agreement from the applicable customs broker for such Inventory or (B) negotiable, confirmation that the bill is issued in the name of the Borrower and consigned to the order of the Administrative Agent, and an acceptable agreement has been executed with the Borrower's customs broker, in which the customs broker agrees that it holds the negotiable bill as agent for the Administrative Agent and has granted the Administrative Agent access to the Inventory and (ii) the common carrier is not an Affiliate of the applicable vendor or supplier;

(h) which is located in any location leased by the Borrower or a Subsidiary Guarantor unless (A) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (B) an Inventory Reserve for up to three (3) months rent due with respect to such facility has been established by the Administrative Agent in its Permitted Discretion (which Reserve shall be reversed if a subsequent Collateral Access Agreement has been received by the Administrative Agent);

(i) which is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document (other than bills of lading to the extent permitted by clause (g) above), unless (i) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may require or (ii) an appropriate Inventory Reserve for up to three (3) months rent or other charges due with respect to such warehouseman or bailee has been established by the Administrative Agent in its Permitted Discretion (which Reserve shall be reversed if a subsequent Collateral Access Agreement has been received by the Administrative Agent);

(j) which is being processed offsite at a third party location or outside processor or is in-transit to or from said third party location or outside processor;

(k) which is a discontinued product or component thereof;

(l) which is the subject of a consignment by the Borrower or any Subsidiary Guarantor as consignor, unless (i) a protective UCC-1 financing statement has been properly filed against the consignee and (ii) there is a written agreement acknowledging that such Inventory is held on consignment, that the Borrower or such Subsidiary Guarantor retains title to such Inventory, that no Lien arising by, through or under such consignee has attached or will attach to such Inventory and requiring consignee to segregate the consigned Inventory from the consignee's other personal or movable property and having such other terms as the Administrative Agent may require for consigned Inventory in its Permitted Discretion;

(m) which contains or bears any intellectual property rights licensed to the Borrower or any Subsidiary Guarantor unless the Administrative Agent is satisfied that the Administrative Agent may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory in the ordinary course under the current licensing agreement;

(n) which is not reflected in a current perpetual inventory report of the Borrower or any Subsidiary Guarantor (unless such Inventory is reflected in a report to the Administrative

Agent as “in transit” Inventory);

(o) which is located at a facility where less than \$100,000 of Inventory (valued at the lower of cost or market value, determined on a first-in-first-out basis) of the Borrower and the Subsidiary Guarantors then exists; or

(p) for which reclamation rights have been asserted by the seller.

Standards of eligibility may be made more restrictive from time to time (and such increased restrictiveness subsequently reversed in whole or in part) solely by the Administrative Agent in the exercise of its Permitted Discretion, with any such changes to be effective three (3) Business Days after delivery of written notice thereof to the Borrower and the Lenders (during which time the Administrative Agent shall be available to discuss any such proposed changes with the Borrower during normal business hours upon reasonable notice); provided that circumstances, conditions, events or contingencies arising on or prior to the Closing Date of which the Administrative Agent had actual knowledge on or prior to the Closing Date shall not be the basis for any increased restrictiveness unless the Administrative Agent had established such increased restrictiveness on the Closing Date or such circumstances, conditions, events or contingencies shall have changed in a manner adverse in any material respect to the interests of the Administrative Agent or the Lenders since the Closing Date.

In addition to the foregoing limitations, at no time shall any Inventory (valued at the lower of cost or market value, determined on a first-in-first-out basis) located in Canada that would otherwise constitute Eligible Inventory, when combined with the face value of Accounts that would otherwise constitute Eligible Accounts of Account Debtors that either (A) are organized under the laws of Canada (or any province or other political subdivision thereof) or (B) have an office in Canada (or any province or political subdivision thereof) but not the United States, exceed, solely for the purpose of calculating Eligible Inventory, \$15,000,000, and, for the avoidance of doubt, no such Inventory shall constitute Eligible Inventory until the requirements of clause (g) of this definition shall have been complied with.

“**Environment**” means indoor air, ambient air, surface water, groundwater, drinking water, land surface, subsurface strata, and natural resources such as wetlands, flora and fauna.

“**Environmental Laws**” means any applicable Law relating to the prevention of pollution or the protection of the Environment and natural resources, and the protection of human health and safety as it relates to the Environment, including any applicable provisions of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, and the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*, and all analogous state or local statutes, and the regulations promulgated pursuant thereto.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of investigation and remediation, fines, penalties or indemnities), of the Loan Parties or any Restricted Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of

any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

“Equity Funded Employee Plan Costs” means cash costs or expenses, incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent funded with cash proceeds contributed to the capital of the Borrower or net cash proceeds of an issuance of Qualified Equity Interests of the Borrower or Equity Interests of any direct or indirect parent of the Borrower (other than amounts designated as Excluded Contributions, any amount designated as a Cure Amount or any amount used in the Cumulative Credit).

“Equity Interests” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with a Loan Party or any Restricted Subsidiary within the meaning of Section 414(b) or (c) of the Code or Section 4001 of ERISA (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA) or insolvent (within the meaning of Section 4245 of ERISA) or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (e) the filing of a notice of intent to terminate, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for, and that could reasonably be expected to result in, the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) with respect to a Pension Plan, the failure to satisfy the minimum funding standard of Section 412 of the Code, whether or not waived, (h) a failure by a Loan Party, any Restricted Subsidiary or any ERISA Affiliate to make a required contribution to a Multiemployer Plan; (i) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to a Loan Party or any Restricted Subsidiary; or (j) the imposition of any liability under Title IV of

ERISA, other than for PBGC premiums due under Section 4007 of ERISA, upon a Loan Party, any Restricted Subsidiary or any ERISA Affiliate.

“Eurocurrency Rate” means:

(a) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to (i) the British Bankers Association LIBOR Rate (**“BBA LIBOR”**), as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such published rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted by Citi and with a term equivalent to such Interest Period would be offered by Citi’s London Branch to major banks in the London interbank Eurodollar market at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by Citi’s London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination.

“Eurocurrency Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate.”

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

“Excess Availability” means, at any time, an amount equal to the Line Cap minus the Total Outstandings.

“Excess Cash Flow” means, for any period, an amount equal to:

(a) the sum, without duplication, of

(i) Consolidated Net Income for such period,

(ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) to the extent deducted in arriving at such Consolidated Net Income,

(iii) decreases in Consolidated Working Capital and long-term accounts receivable (outside of the ordinary course of business) for such period (other than any such decreases arising from acquisitions or dispositions (outside of the ordinary course of business) by the Borrower and its Restricted Subsidiaries completed during such period),

(iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than sales in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income,

(v) expenses deducted from Consolidated Net Income during such period in respect of expenditures made during any prior period for which a deduction from Excess Cash Flow was made in such period pursuant to clause (b)(xi), (xii) or (xiii) below,

(vi) cash income or gain (actually received in cash) excluded from the calculation of Consolidated Net Income for such period pursuant to the definition thereof, and

(vii) cash receipts in respect of Swap Contracts during such period to the extent not already reflected in Consolidated Net Income for such period, minus

(b) the sum, without duplication, of

(i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income, and cash charges included in clauses (a) through (m) of the definition of Consolidated Net Income,

(ii) without duplication of amounts deducted pursuant to clause (xi) below in prior periods, the amount of Capital Expenditures or acquisitions of intellectual property to the extent not expensed and Capitalized Software Expenditures accrued or made in cash or accrued during such period, to the extent that such Capital Expenditures or acquisitions were financed with Internally Generated Cash and were not made by utilizing the Cumulative Retained Excess Cash Flow Amount,

(iii) the aggregate amount of all principal payments of Indebtedness of the Borrower or its Restricted Subsidiaries to the extent financed with Internally Generated Cash) (including (A) the principal component of payments in respect of Capitalized Leases and (B) the amount of any scheduled amortization repayment of loans under the Term Loan Credit Agreement and any mandatory prepayment of loans pursuant to the Term Loan Credit Agreement to the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase, but excluding (W) all other prepayments of loans under the Term Loan Credit Agreement (other than prepayments referred to in clause (B) above) during such period, (X) all prepayments of Revolving Credit Loans and Swing Line Loans, (Y) all prepayments in respect of any other revolving credit facility, except to the extent there is an equivalent permanent reduction in commitments thereunder and (Z) payments of any Junior Financing made during such period except to the extent permitted to be paid pursuant to

Section 7.13(a),

(iv) an amount equal to the aggregate net non-cash gain on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

(v) increases in Consolidated Working Capital and long-term accounts receivable for such period (other than any such increases arising from acquisitions or dispositions by the Borrower and its Restricted Subsidiaries during such period),

(vi) cash payments by the Borrower and its Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and its Restricted Subsidiaries other than Indebtedness to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income and to the extent financed with Internally Generated Cash,

(vii) without duplication of amounts deducted pursuant to clause (xi) below in prior fiscal years, the amount of Investments and acquisitions made in cash during such period pursuant to Section 7.02 (other than Section 7.02(a), (c), (h), (l), (q), (r), (s) or (t)) to the extent that such Investments and acquisitions were financed with Internally Generated Cash and were not made by utilizing the Cumulative Retained Excess Cash Flow Amount,

(viii) the amount of Restricted Payments paid during such period pursuant to Section 7.06(f), (g)(x), (h) and (j) to the extent such Restricted Payments were financed with Internally Generated Cash,

(ix) to the extent not otherwise decreasing Consolidated Net Income in such Excess Cash Flow Period, the aggregate amount of expenditures actually made by the Borrower and its Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period,

(x) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and its Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness,

(xi) without duplication of amounts deducted from Excess Cash Flow in prior periods, the aggregate consideration required to be paid in cash by the Borrower and its Restricted Subsidiaries pursuant to binding contracts (the "**Contract Consideration**") entered into prior to or during such period relating to acquisitions constituting Investments permitted under this Agreement, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property to the extent expected to be consummated or made, plus any restructuring cash expenses, pension payments or tax contingency payments that have been added to Excess Cash Flow pursuant to clause (a)(ii) above that will be required to be made, in each case during the period of four

consecutive fiscal quarters of the Borrower following the end of such period; *provided* that to the extent the aggregate amount of Internally Generated Cash not utilizing the Cumulative Retained Excess Cash Flow Amount actually utilized to finance such acquisitions, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property during such period of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters,

(xii) the amount of cash taxes paid in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(xiii) cash expenditures in respect of Swap Contracts during such period to the extent not deducted in arriving at such Consolidated Net Income, and

(xiv) any payment of cash to be amortized or expensed over a future period and recorded as a long-term asset (so long as any such amortization or expense in such future period is added back to Excess Cash Flow in such future period).

Notwithstanding anything in the definition of any term used in the definition of "Excess Cash Flow" to the contrary, all components of Excess Cash Flow shall be computed for the Borrower and its Restricted Subsidiaries on a consolidated basis.

"Excess Cash Flow Period" means each fiscal year of the Borrower commencing with and including the fiscal year ending March 31, 2013 but in all cases for purposes of calculating the Cumulative Retained Excess Cash Flow Amount shall only include such fiscal years for which financial statements and a Compliance Certificate have been delivered in accordance with Sections 6.01(a) and 6.02(a) and for which any prepayments under the Term Loan Credit Agreement (if any) required due to Excess Cash Flow have been made (it being understood that the Retained Percentage of Excess Cash Flow for any Excess Cash Flow Period shall be included in the Cumulative Retained Excess Cash Flow Amount regardless of whether a prepayment is required by the Term Loan Credit Agreement).

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

"Excluded Assets" means (i) any fee owned real property (other than Material Real Properties) and any leasehold rights and interests in real property (including landlord waivers, estoppels and collateral access letters), (ii) motor vehicles and other assets subject to certificates of title, (iii) commercial tort claims, (iv) licenses, state or local franchises, charters and authorizations and any other property and assets to the extent that the Administrative Agent may not validly possess a security interest therein under applicable Laws (including, without limitation, rules and regulations of any Governmental Authority or agency) or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization, other than to the extent such prohibition or limitation is rendered ineffective under the UCC or other applicable Law notwithstanding such prohibition, (v) any particular asset or right under contract, if the pledge thereof or the security interest therein (A) is prohibited by applicable Law other than to the extent such prohibition is rendered ineffective under the UCC or other applicable Law notwithstanding such prohibition or (B) to the extent and for as long as it would violate the terms of any written agreement, license or lease with respect to such asset (in each case,

after giving effect to the relevant provisions of the UCC or other applicable Laws) or would give rise to a termination right pursuant to any “change of control” or other similar provision under such written agreement, license or lease (except to the extent such provision is overridden by the UCC or other applicable Laws), in each case, (a) excluding any such written agreement that relates to Permitted Ratio Debt and (b) only to the extent that such limitation on such pledge or security interest is otherwise permitted under Section 7.09, (vi) Margin Stock and Equity Interests in any Person other than wholly owned Restricted Subsidiaries (but excluding Excluded Pledged Subsidiaries and Subsidiaries that are not Material Subsidiaries), (vii) any permitted agreement, lease, license or property subject to a purchase money security interest or other similar arrangement to the extent the pledges thereof and security interests therein are prohibited by such permitted agreement, lease, license or purchase money arrangement, other than proceeds and receivables thereof, except to the extent the pledge of such permitted agreement, lease, license or property is expressly deemed effective under the Uniform Commercial Code or other applicable Law or principle of equity notwithstanding such prohibition, (viii) the creation or perfection of pledges of, or security interests in, any property or asset that would result in material adverse tax consequences to Holdings, the Borrower or any of its Restricted Subsidiaries, as reasonably determined by the Borrower in consultation with the Administrative Agent, (ix) letter of credit rights, except to the extent constituting support obligations for other Collateral as to which perfection of the security interest in such other Collateral is accomplished solely by the filing of a UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC financing statement), (x) cash and Cash Equivalents (other than (A) proceeds of Collateral as to which perfection of the security interest in such proceeds is accomplished solely by the filing of a UCC financing statement and (B) as set forth in the second succeeding parenthetical phrase), deposit and other bank and securities accounts (including securities entitlements and related assets) (in each case, other than the Blocked Accounts or other accounts subject to a control agreement in accordance with Section 3.03(g) of the Security Agreement and proceeds of Collateral held in such accounts) and any other assets requiring perfection through control agreements or by “control” (other than in respect of certificated Equity Interests in the Borrower and in wholly owned Restricted Subsidiaries that are Material Subsidiaries, which Equity Interests are otherwise required to be pledged), (xi) any intent-to-use trademark application prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal Law and (xii) particular assets if and for so long as, in the reasonable judgment of the Administrative Agent in consultation with the Borrower, the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance, surveys, abstracts or appraisals in respect of such assets exceed the practical benefits to be obtained by the Lenders therefrom; *provided, however*, that Excluded Assets shall not include any Proceeds, substitutions or replacements of any Excluded Assets referred to in clause (i) through (xii) (unless such Proceeds, substitutions or replacements would independently constitute Excluded Assets referred to in clauses (i) through (xii)). Notwithstanding the foregoing, in no event shall any asset securing any Indebtedness incurred pursuant to Section 7.03(s) or 7.03(x) be an Excluded Asset.

“**Excluded Contribution**” means the amount of capital contributions to the Borrower or net proceeds from the sale or issuance of Qualified Equity Interests of the Borrower (or issuances of debt securities that have been converted into or exchanged for any such Equity Interests) (other than any amount designated as a Cure Amount or used for Equity Funded Employee Plan Costs) and designated by the Borrower to the Administrative Agent as an Excluded Contribution on the date such capital contributions are made or such Equity Interests are sold or issued.

“Excluded Deposit Account” means any DDA (i) used exclusively for payroll, payroll taxes, employee benefits or similar disbursements and (ii) with an average monthly balance of less than \$250,000, not to exceed \$1,000,000 in the aggregate at any time for all DDAs that are Excluded Deposit Accounts pursuant to this clause (ii).

“Excluded Pledged Subsidiary” means (a) any Subsidiary for which the pledge of its Equity Interests is prohibited by applicable Law or by Contractual Obligations (excluding any Contractual Obligations that relates to Permitted Ratio Debt) existing on the Closing Date (or, in the case of a newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) or for which governmental (including regulatory) consent, approval, license or authorization would be required, (b) any other Subsidiary with respect to which, in the judgment of the Borrower and the Administrative Agent, the burden or cost or other consequences of the pledge of its Equity Interests shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (c) any not-for-profit Subsidiaries, and (d) any Subsidiary for which the pledge of its Equity Interests would result in any material adverse tax consequences for Holdings, the Borrower or any of its Restricted Subsidiaries, as reasonably determined by the Borrower, in consultation with the Administrative Agent. Notwithstanding the foregoing, in no event shall any Subsidiary that is an obligor under any Indebtedness incurred pursuant to Section 7.03(s) or 7.03(x) be an Excluded Pledged Subsidiary.

“Excluded Subsidiary” means (a) any Subsidiary that is not a wholly owned Subsidiary of the Borrower or a Guarantor, (b) any Subsidiary that is prohibited by applicable Law or by Contractual Obligations existing on the Closing Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from guaranteeing the Obligations or if guaranteeing the Obligation would require governmental (including regulatory) consent, approval, license or authorization, (c) any other Subsidiary with respect to which, in the judgment of the Borrower and the Administrative Agent, the burden or cost or other consequences of providing a Guarantee of the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (d) any Foreign Subsidiary, (e) any non-for-profit Subsidiaries, (f) any Unrestricted Subsidiaries, (g) any Subsidiaries that are captive insurance companies, (h) any direct or indirect Domestic Subsidiary that has no material assets other than Equity Interests (including any Indebtedness treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries that are CFCs, (i) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC and (j) any Subsidiary with respect to which the provision of a Guarantee of the Obligations would result in any material adverse tax consequences for Holdings, the Borrower or any of its Restricted Subsidiaries, as reasonably determined by the Borrower, in consultation with the Administrative Agent. Notwithstanding the foregoing, in no event shall any Subsidiary that is an obligor under any Indebtedness incurred pursuant to Section 7.03(s) or 7.03(x) be an Excluded Subsidiary.

“Existing Notes” means the \$250,000,000 in aggregate principal amount of the 8.25% senior notes due 2018 issued pursuant to the Existing Notes Indenture and outstanding on the Closing Date.

“Existing Notes Indenture” means the Indenture for the Existing Notes, dated as of March 24, 2010, between the Borrower and U.S. Bank National Association, as trustee, as in effect on the Closing Date and as amended, modified, supplemented, replaced or refinanced to the extent not prohibited by this Agreement.

“Existing Revolver Tranche” has the meaning provided in Section 2.16(b).

“**Expiring Credit Commitment**” has the meaning provided in Section 2.04(g).

“**Extended Revolving Credit Commitments**” has the meaning provided in Section 2.16(b).

“**Extending Revolving Credit Lender**” has the meaning provided in Section 2.16(c).

“**Extension**” means the establishment of a Revolving Extension Series by amending a Loan pursuant to Section 2.16 and the applicable Extension Amendment.

“**Extension Amendment**” has the meaning provided in Section 2.16(d).

“**Extension Election**” has the meaning provided in Section 2.16(c).

“**Facility**” means the Revolving Credit Facility, a given Class of Incremental Revolving Credit Commitments, or a given Revolver Extension Series of Extended Revolving Credit Commitments, as the context may require.

“**FATCA**” means current Sections 1471 through 1474 of the Code and any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with, and any current or future Treasury Regulations or other administrative guidance promulgated thereunder.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“**Fee Letter**” means the Fee Letter, dated as of December 20, 2011, among Holdings and the Arrangers.

“**FIRREA**” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“**Fitch**” means Fitch Ratings, Ltd., a division of Fitch, Inc., or any successor by merger or consolidation to its business.

“**Fixed Asset Administrative Agents**” has the meaning assigned to such term in the Term Loan Intercreditor Agreement.

“**Fixed Asset Obligations**” has the meaning assigned to such term in the Term Loan Intercreditor Agreement.

“**Fixed Asset Priority Collateral**” has the meaning assigned to such term in the Term Loan Intercreditor Agreement.

“**Flood Insurance Laws**” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

“**Foreign IP Subsidiary**” means one or more wholly owned Subsidiaries of any Loan Party (a) that is incorporated in Ireland, Switzerland or other jurisdictions reasonably acceptable to the Administrative Agent, (b) whose Equity Interests shall be pledged to the Administrative Agent to the extent required pursuant to Section 6.11 and (c)(i) whose Organization Documents do not prevent or otherwise limit, and whose jurisdiction of organization and applicable Law do not prevent or otherwise limit, the granting of Liens to the Administrative Agent on 65% of the Equity Interests of such wholly owned Subsidiaries, foreclosure under such Liens or any other exercise of remedies similar to the remedies set forth in the Collateral Documents in respect of capital stock and (ii) whose Organization Documents do not prevent or otherwise limit (except to the extent required by applicable Law), any payment by any wholly owned Subsidiary to any Loan Party (whether directly or indirectly through any wholly owned Subsidiary).

“**Foreign IP Transfer**” means the transfer to one or more Foreign IP Subsidiaries of (a) any intellectual property to the extent registered in any jurisdiction other than the United States or any State thereof or the District of Columbia or (b) any unregistered intellectual property and all rights under manufacturing, distribution and other contracts, in each case to the extent such intellectual property and rights are used in or otherwise related to the development, marketing, manufacturing, packaging, handling, distribution or sale of products sold only outside of the United States.

“**Foreign Subsidiary**” means any direct or indirect Restricted Subsidiary of the Borrower which is not a Domestic Subsidiary.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Pro Rata Share of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Pro Rata Share of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

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

“**Funded Debt**” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders

to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through conforming changes made consistent with IFRS) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through conforming changes made consistent with IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Granting Lender**” has the meaning specified in Section 10.07(h).

“**Guarantee**” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or monetary other obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guaranteed Obligations**” has the meaning specified in Section 11.01.

“**Guarantor**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement” and shall include each Restricted Subsidiary that shall have become a Guarantor pursuant to Section 6.11. For avoidance of doubt, the Borrower in its sole discretion may cause any Restricted Subsidiary that is not a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, and any such Restricted Subsidiary shall be a Guarantor, Loan Party and Subsidiary Guarantor hereunder for all purposes.

“**Guaranty**” means, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“**Hazardous Materials**” means all materials, pollutants, contaminants, chemicals, compounds, constituents, substances or wastes, in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, mold, electromagnetic radio frequency or microwave emissions that are regulated pursuant to, or which could give rise to liability under, applicable Environmental Law.

“**Hedge Bank**” has the meaning set forth in the definition of ABL Pari Passu Hedge Agreement.

“**Holdings**” has the meaning specified in the introductory paragraph to this Agreement.

“**Honor Date**” has the meaning set forth in Section 2.03(c)(i).

“**IFRS**” means international accounting standards as promulgated by the International Accounting Standards Board.

“**Incremental Amendment**” has the meaning set forth in Section 2.14(f).

“**Incremental Commitment Request**” has the meaning set forth in Section 2.14(a).

“**Incremental Facility Closing Date**” has the meaning set forth in Section 2.14(d).

“**Incremental Revolving Credit Commitments**” has the meaning set forth in Section 2.14(a).

“**Incremental Revolving Credit Lender**” has the meaning set forth in Section 2.14(c).

“**Incremental Revolving Loan**” has the meaning set forth in Section 2.14(b).

“**Indebtedness**” means, as to any Person at a particular time, without duplication, all of the following:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and

commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation until such obligation is not paid after becoming due and payable and (iii) accruals for payroll and other liabilities accrued in the ordinary course);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests;

(h) if and to the extent that the foregoing would constitute indebtedness or a liability in accordance with GAAP; and

(i) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Net Debt and (B) in the case of the Borrower and its Subsidiaries, exclude all intercompany Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"Indemnified Liabilities" has the meaning set forth in Section 10.05.

"Indemnified Taxes" means, with respect to any Agent or any Lender, all Taxes other than (i) any Taxes imposed on or measured by its net income, however denominated, and franchise (and similar) Taxes imposed on it in lieu of net income Taxes, imposed by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising solely from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, and/or enforcing, any Loan

Document, (ii) any Taxes (other than Taxes described in clause (i) above) imposed by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising solely from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, and/or enforcing, any Loan Document, (iii) any Taxes attributable to the failure of such Agent or Lender to deliver the documentation required to be delivered pursuant to Section 3.01(d), (iv) any branch profits Taxes imposed by the United States under Section 884(a) of the Code, or any similar Tax, imposed by any jurisdiction described in clause (ii), (v) in the case of a Lender (other than an assignee pursuant to a request by Borrower under Section 3.07(a)), any U.S. federal withholding Tax that is imposed pursuant to any Law in effect at the time the Lender becomes a party to this Agreement, or designates a new Lending Office, except to the extent such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts or indemnification payments from the Borrower or Guarantor with respect to such withholding Tax pursuant to Section 3.01, and (vi) any U.S. federal taxes imposed under FATCA.

“**Indemnitees**” has the meaning set forth in Section 10.05.

“**Independent Financial Advisor**” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

“**Information**” has the meaning set forth in Section 10.08.

“**Intellectual Property Security Agreement**” has the meaning set forth in the Security Agreement.

“**Intercompany Note**” means a promissory note substantially in the form of Exhibit G.

“**Interest Payment Date**” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; *provided* that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made.

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

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period (other than an Interest Period having a duration of less than one month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

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

“Internally Generated Cash” means, with respect to any Person, cash funds of such Person and its Restricted Subsidiaries not constituting (x) proceeds of the issuance of (or contributions in respect of) Equity Interests of such Person, (y) proceeds of the incurrence of Indebtedness (other than the incurrence of Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility) by such Person or any of its Restricted Subsidiaries or (z) proceeds of Dispositions and Casualty Events.

“Inventory” has the meaning assigned to such term in the Security Agreement.

“Inventory Reserves” means any and all reserves which the Administrative Agent deems necessary, in its Permitted Discretion, to maintain (including, without limitation, reserves for slow moving Inventory, intercompany profits and Inventory shrinkage and Permitted Liens on any Eligible Inventory ranking prior to the Liens of the Administrative Agent for the benefit of the Secured Parties) with respect to the Inventory of the Borrower or any Subsidiary Guarantor. The Administrative Agent may, from time to time, in its Permitted Discretion, adjust Inventory Reserves used in computing the Borrowing Base upon not less than three (3) Business Day’s prior written notice to the Borrower (during which period the Administrative Agent shall be available to discuss any such proposed adjustments with the Borrower during normal business hours upon reasonable notice).

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of the Borrower and its Subsidiaries, intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment at any time shall be the amount actually invested (measured at the time made), without adjustment for subsequent increases or decreases in the value of such Investment, less any Returns to the Borrower or a Restricted Subsidiary in respect of such Investment.

“Investment Grade Rating” shall mean with respect to any Person, such Person has at least the minimum rating indicated below from two out of the three ratings agencies named below:

Ratings Agency	Minimum Rating
S&P	BBB- (stable)
Moody's	Baa3 (stable)
Fitch	BBB- (stable)

“**IP Rights**” has the meaning set forth in Section 5.15.

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

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

“**Junior Financing**” has the meaning set forth in Section 7.13(a).

“**Junior Financing Documentation**” means any documentation governing any Junior Financing.

“**Latest Maturity Date**” means, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time, including the latest maturity date of any Incremental Revolving Credit Commitment, or any Extended Revolving Credit Commitment, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“**L/C Advance**” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Pro Rata Share or other applicable share provided for under this Agreement.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

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

“L/C Issuer” means Citi and any other Lender that becomes an L/C Issuer in accordance with Section 2.03(k) or 10.07(j), in each case, in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.11. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” has the meaning specified in the introductory paragraph to this Agreement and, as the context requires, includes an L/C Issuer and a Swing Line Lender, and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.”

“Lending Office” means, as to any Lender, such office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Letter of Credit” means any letter of credit issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit; *provided, however*, that any commercial letter of credit issued hereunder shall provide solely for cash payment upon presentation of a sight draft.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the relevant L/C Issuer.

“Letter of Credit Expiration Date” means the day that is five (5) Business Days prior to the scheduled Maturity Date then in effect for the applicable Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Sublimit” means an amount equal to the lesser of (a) \$25,000,000 and (b) the aggregate amount of the Revolving Credit Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing).

“Line Cap” means, at any time, an amount equal to lesser of (i) the Aggregate Commitments at such time and (ii) the Borrowing Base at such time.

“Loan” means an extension of credit under Article II by a Lender to the Borrower in the form of a Revolving Credit Loan or a Swing Line Loan (it being understood and agreed that Permitted Advances shall be deemed to be Loans for all purposes hereunder).

“**Loan Documents**” means, collectively, (i) this Agreement, (ii) the Notes, (iii) the Collateral Documents, (iv) any Incremental Amendment or Extension Amendment, (v) each Letter of Credit Application and (vi) the Confidential Disclosure Letter.

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

“**London Banking Day**” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“**Margin Stock**” shall have the meaning assigned to such term in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Master Agreement**” has the meaning specified in the definition of “Swap Contract.”

“**Material Adverse Effect**” means a (a) material adverse effect on the business, operations, assets or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform any of their payment obligations under any Loan Document to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders or the Administrative Agent under any Loan Document.

“**Material Domestic Subsidiary**” means, at any date of determination, each of the Borrower’s Domestic Subsidiaries (a) whose total assets at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Closing Date, Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in clauses (a) or (b) comprise in the aggregate more than 5.0% of Total Assets as of the end of the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered pursuant to Section 6.01 or more than 5.0% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter or Test Period are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Domestic Subsidiaries as “Material Domestic Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 applicable to such Subsidiary.

“**Material Foreign Subsidiary**” means, at any date of determination, each of the Borrower’s Foreign Subsidiaries (a) whose total assets at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Closing Date, Foreign Subsidiaries not meeting the thresholds set forth in clauses (a) or (b) comprise in the aggregate more than 5.0% of Total Assets as of the end of the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered pursuant to Section 6.01 or more than 5.0% of the consolidated gross revenues of the Borrower and the Restricted

Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter or Test Period are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Foreign Subsidiaries as “Material Foreign Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of the definition of “Collateral and Guarantee Requirement.”

“**Material Real Property**” means any fee-owned real property located in the United States that is owned by any Loan Party and that has a fair market value in excess of \$5,000,000 (at the Closing Date or, with respect to real property acquired after the Closing Date, at the time of acquisition, in each case, as reasonably estimated by the Borrower in good faith).

“**Material Subsidiary**” means any Material Domestic Subsidiary or any Material Foreign Subsidiary.

“**Maturity Date**” means (i) with respect to the Revolving Credit Facility, the fifth anniversary of the Closing Date; (ii) with respect to any tranche of Extended Revolving Credit Commitments, the final maturity date as specified in the applicable Revolver Extension Request accepted by the respective Lender or Lenders; and (iii) with respect to any Incremental Revolving Loans or Incremental Revolving Credit Commitments, the final maturity date as specified in the applicable Incremental Amendment; provided that, in each case, if such day is not a Business Day, the Maturity Date shall be the Business Day immediately succeeding such day.

“**Maximum Rate**” has the meaning specified in Section 10.10.

“**Minimum Availability Period**” means any period (a) commencing when Excess Availability for any consecutive two calendar day period is less than the greater of (i) 15% of the Aggregate Commitments and (ii) \$7,500,000 and (b) ending after Excess Availability is at least the greater of (i) 15% of the Aggregate Commitments and (ii) \$7,500,000 for a period of 30 consecutive days.

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

“**Mortgage Policies**” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgaged Properties**” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgages**” means collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by the Loan Parties in favor or for the benefit of the Administrative Agent on behalf of the Secured Parties creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the Administrative Agent, and any other mortgages executed and delivered pursuant to Sections 6.11 and 6.13, in each case, as the same may from time to time be amended, restated, supplemented or otherwise modified.

“**Mult employer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which a Loan Party, any Restricted Subsidiary or any ERISA Affiliate makes or is

obligated to make contributions, or during the preceding six plan years, has made or been obligated to make contributions.

“**Net Orderly Liquidation Value**” means, with respect to Inventory of any Person, the net orderly liquidation value thereof expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined in a manner reasonably acceptable to the Administrative Agent by an appraiser reasonably acceptable to the Administrative Agent (it being understood that the Net Orderly Liquidation Value shall be expressed as a percentage of such Inventory).

“**Net Proceeds**” means:

(a) 100% of the cash proceeds actually received by the Borrower or any of the Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but in each case only as and when received) from any Disposition or Casualty Event, net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) the principal amount of any Indebtedness that is secured by a Lien (other than a Lien that ranks *pari passu* with or subordinated to the Liens securing the Obligations) on the asset subject to such Disposition or Casualty Event and that is required to be repaid in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents), together with any applicable premium, penalty, interest and breakage costs, (iii) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iii)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof, (iv) taxes paid or reasonably estimated to be payable as a result thereof, and (v) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Restricted Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction); *provided* that, subject to the restrictions set forth in Sections 7.05(j), if the Borrower shall deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent promptly following receipt of any such proceeds setting forth the Borrower’s good faith intention to use any portion of such proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions or any acquisition of all or substantially all the assets of, or all the Equity Interests (other than directors’ qualifying shares) in, a Person or division or line of business of a Person (or any subsequent investment made in a Person, division or line of business previously acquired), in each case within 12 months of such receipt, such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 12 months of such receipt, so used or contractually committed to be so used (it being understood that

if any portion of such proceeds are not so used within such 12 month period but within such 12-month period are contractually committed to be used, then upon the termination of such contract or if such Net Proceeds are not so used within the later of such 12-month period and 180 days from the entry into such contractual commitment, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); *provided, further*, that no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless (x) such proceeds shall exceed \$10,000,000 or (y) the aggregate net proceeds exceeds \$20,000,000 in any fiscal year (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower shall be disregarded.

“**Nominal Shares**” means (a) for any Foreign Subsidiary, nominal issuances of Equity Interests in an aggregate amount not to exceed 0.5% of the Equity Interests of such Foreign Subsidiary on a fully-diluted basis and (b) in any case, director’s qualifying shares, in each case to the extent such issuances are required by applicable Law.

“**Non-Consenting Lender**” has the meaning set forth in Section 3.07(d).

“**Non-Defaulting Lender**” means, at any time, a Lender that is not a Defaulting Lender.

“**non-Expiring Credit Commitment**” has the meaning provided in Section 2.04(g).

“**Non-extension Notice Date**” has the meaning specified in Section 2.03(b)(iii).

“**Note**” means a Revolving Credit Note or a Swing Line Note, as the context may require.

“**Notice of Intent to Cure**” has the meaning set forth in Section 8.04.

“**Obligations**” means all (x) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Restricted Subsidiaries arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or Restricted Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (y) obligations of the Borrower or any Restricted Subsidiary arising under any ABL Secured Hedge Agreement or any ABL Secured Treasury Services Agreement. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their Restricted Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation

(including guarantee obligations) to pay principal, interest, Letter of Credit fees, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

“**OID**” means original issue discount.

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

“**Other Taxes**” has the meaning specified in Section 3.01(b).

“**Outstanding Amount**” means (a) with respect to the Revolving Credit Loans, Swing Line Loans and Protective Advances on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing), Swing Line Loans and Protective Advances, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the outstanding Dollar Amount thereof on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing) or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“**Overnight Rate**” means, for any day, the greater of the Federal Funds Rate and an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

“**Participant**” has the meaning specified in Section 10.07(e).

“**Participant Register**” has the meaning specified in Section 10.07(e).

“**Payment Condition**” means, with respect to any action taken pursuant to Section 6.14, Section 7.02(i), 7.02(n)(y), 7.06(g)(y) or 7.13(a) (in the case of Section 7.13, to the extent using the Cumulative Credit) or 7.03(s), immediately after giving effect to such action, (I) Excess Availability is (and was for the period of 30 days immediately preceding such action) no less than the greater of (A) \$12,500,000 and (B) 25% of the Aggregate Commitments or (II) (x) Excess Availability is (and was for the period of 30 days immediately preceding such action) no less than the greater of (A) \$7,500,000 and (B) 15% of the Aggregate Commitments and (y) the Consolidated Fixed Charge Coverage Ratio for the most recently

ended Test Period at the end of which financial statements were required to be delivered hereunder calculated on a Pro Forma Basis is greater than or equal to 1.00 to 1.00.

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

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

“**Perfection Certificate**” means a certificate in the form of Exhibit II to the Security Agreement or any other form reasonably approved by the Administrative Agent, as the same shall be supplemented from time to time.

“**Permitted Acquisition**” has the meaning set forth in Section 7.02(i).

“**Permitted Discretion**” means the Administrative Agent’s commercially reasonable judgment, exercised in good faith in accordance with its customary business practices for asset-based lending transactions reasonably comparable to the credit facility hereunder; *provided* that any standard of eligibility or reserve established or modified by the Administrative Agent shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis for such standard of eligibility or reserve, as reasonably determined, without duplication, by the Administrative Agent in good faith.

“**Permitted Liens**” means each Lien permitted under Section 7.01(a), (c), (d), (e), (f), (g), (h), (i), (j), (k), (n), (q), (r), (t), (y) or (ee).

“**Permitted Ratio Debt**” means Indebtedness of the Borrower or any Restricted Subsidiary, *provided* that immediately after giving Pro Forma Effect thereto and to the use of the proceeds thereof, (i) no Event of Default shall be continuing or result therefrom, (ii) the Payment Condition shall be satisfied, (iii) the Total Leverage Ratio is no greater than 5.25:1.00, (iv) if such Indebtedness is secured, the aggregate principal amount of such Indebtedness shall not exceed \$220,000,000 minus the aggregate amount of all Incremental Revolving Credit Commitments incurred pursuant to Section 2.14(d) hereof minus the aggregate amount of all incremental commitments or loans that shall have become effective under the Term Loan Credit Agreement after the Closing Date, (v) such Indebtedness does not mature prior to the date that is ninety-one (91) days after the Latest Maturity Date at the time such Indebtedness is incurred, (vi) [reserved], (vii) such Indebtedness shall have terms and conditions (other than pricing, rate floors, discounts, fees, premiums and optional prepayment or redemption provisions) that are not materially less favorable (when taken as a whole) to the Borrower than the terms and conditions of the Term Loan Credit Agreement (as in effect on the Closing Date), (viii) if such Indebtedness is incurred or guaranteed on a secured basis by a Loan Party, such Indebtedness is subject to the Term Loan Intercreditor Agreement and (ix) any such Indebtedness incurred or guaranteed by a Restricted Subsidiary that is not a Loan Party, together with any Indebtedness incurred or guaranteed by a Restricted Subsidiary that is not a Loan Party pursuant to Section 7.03(g), does not exceed in the aggregate at any time outstanding the greater of \$35,000,000 and 2.00% of Total Assets, in each case determined at the time of

incurrence; *provided* that a certificate of the Borrower as to the satisfaction of the conditions described in clause (vii) above delivered at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirements of such clause (vii), shall be conclusive unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination (including a description of the basis upon which it disagrees).

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts owing or paid related to such Indebtedness, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Sections 7.03(e) or (f), at the time thereof, no Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended and (e) notwithstanding anything contained in Section 7.03(c), such modification, refinancing, refunding, renewal, replacement or extension is incurred by one or more Persons who is an obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended.

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

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

“Platform” has the meaning set forth in Section 6.01(d).

“Pledged Debt” has the meaning set forth in the Security Agreement.

“Pledged Equity” has the meaning set forth in the Security Agreement.

“Proceeding” has the meaning set forth in Section 10.05.

“**Proceeds**” has the meaning set forth in Section 9-102(a)(64) of the UCC.

“**Pro Forma Balance Sheet**” has the meaning set forth in Section 5.05(c).

“**Pro Forma Basis**” and “**Pro Forma Effect**” means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.09.

“**Pro Forma Financial Statements**” has the meaning set forth in Section 5.05(c).

“**Pro Rata Share**” means, with respect to each Lender, at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments of such Lender under the applicable Facility or Facilities at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable Facility or Facilities at such time; *provided* that, in the case of the Revolving Credit Facility, if such Commitments have been terminated, then the Pro Rata Share of each Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof.

“**Projections**” has the meaning set forth in Section 6.01(c).

“**Protective Advances**” has the meaning set forth in Section 2.18(a).

“**Public Lender**” has the meaning set forth in Section 6.01(d).

“**Qualified Equity Interests**” means any Equity Interests that are not Disqualified Equity Interests.

“**Real Property**” means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or otherwise held by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“**Refinancing**” means the prepayment of all indebtedness under that certain Credit Agreement, dated as of March 24, 2010 (as amended, restated, supplemented, or modified from time to time prior to the Closing Date), among the Borrower, Holdings, Bank of America, N.A., as administrative agent and collateral agent, the lenders party thereto, and the other agents party thereto, shall have been paid in full, and all commitments, security interests and guaranties in connection therewith shall have been terminated and released.

“**Register**” has the meaning set forth in Section 10.07(d).

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in an offering pursuant to Rule 144A under the Securities Act or other private placement transaction under the Securities

Act of 1933, substantially identical notes (having the same guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

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

“**Release**” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing or migrating in, into, onto or through the Environment or from or through any facility, property or equipment.

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the otherwise applicable notice period has been waived by regulation or otherwise by the PBGC.

“**Request for Credit Extension**” means (a) with respect to a Borrowing, continuation or conversion of Revolving Credit Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“**Required Class Lenders**” means, with respect to any Class on any date of determination, Lenders having more than 50% of the sum of (i) the outstanding Loans under such Class and (ii) the aggregate unused Commitments under such Facility.

“**Required Facility Lenders**” mean, as of any date of determination, with respect to any Facility, Lenders having more than 50% of the sum of (a) the Total Outstandings under such Facility (with the aggregate Dollar Amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans, as applicable, under such Facility being deemed “held” by such Lender for purposes of this definition) and (b) the aggregate unused Commitments under such Facility; *provided* that the unused Commitments of, and the portion of the Total Outstandings under such Facility held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Facility Lenders.

“**Required Lenders**” means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings (with the aggregate Dollar Amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition), and (b) aggregate unused Revolving Credit Commitments; *provided* that the unused Revolving Credit Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“**Reserves**” means any and all reserves (including, without limitation, Account Reserves and Inventory Reserves) which the Administrative Agent deems necessary, in its Permitted Discretion, to maintain (including, without limitation, reserves for liabilities secured by Liens on Collateral included in the Borrowing Base, which Liens are senior to the Administrative Agent’s Liens, reserves for rent at locations leased by the Borrower or any Subsidiary Guarantor and for consignee’s, warehousemen’s and bailee’s charges (unless a Collateral Access Agreement shall be in effect with respect to the subject property) and *provided* that such reserves for any such location shall not exceed the amount advanced

against Eligible Inventory located at such location, reserves for ABL Pari Passu Hedge Agreements, reserves for ABL Pari Passu Treasury Services Agreements) with respect to the Collateral of the Borrower or any Subsidiary Guarantor. The Administrative Agent may, from time to time, in its Permitted Discretion, (x) other than with respect to reserves for ABL Pari Passu Hedge Agreements and ABL Pari Passu Treasury Services Agreements, adjust Reserves upon not less than three (3) Business Days' prior written notice to the Borrower (during which period the Administrative Agent shall be available to discuss any such proposed adjustments with the Borrower during normal business hours upon reasonable notice) and (y) with respect to reserves for ABL Pari Passu Hedge Agreements and ABL Pari Passu Treasury Services Agreements, adjust Reserves upon same-day notice to the Borrower.

"Responsible Officer" means the chief executive officer, president, vice president, chief financial officer, chief administrative officer, secretary or assistant secretary, treasurer or assistant treasurer or other similar officer of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Cash" means cash and Cash Equivalents held by Restricted Subsidiaries that is contractually restricted from being distributed to the Borrower.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower's or a Restricted Subsidiary's stockholders, partners or members (or the equivalent Persons thereof).

"Restricted Subsidiary" means any Subsidiary of Holdings other than an Unrestricted Subsidiary.

"Retained Percentage" means, with respect to any Excess Cash Flow Period (a) 100% minus (b) the Applicable ECF Percentage with respect to such Excess Cash Flow Period.

"Returns" means, with respect to any Investment, any dividends, distributions, interest, fees, premium, return of capital, repayment of principal, income, profits (from a Disposition or otherwise) and other amounts received or realized in respect of such Investment.

"Revolver Extension Request" has the meaning provided in Section 2.16(b).

"Revolver Extension Series" has the meaning provided in Section 2.16(b).

"Revolving Commitment Increase" has the meaning set forth in Section 2.14(a).

"Revolving Credit Borrowing" means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period, made by each of the Revolving Credit Lenders pursuant to Section 2.01(b).

“**Revolving Credit Commitment**” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrower pursuant to Section 2.01(b), (b) purchase participations in L/C Obligations in respect of Letters of Credit and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name in Section 1.01A of the Confidential Disclosure Letter under the caption “Revolving Credit Commitment” or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14 and Section 10.07(b)). The aggregate Revolving Credit Commitments of all Revolving Credit Lenders shall be \$50,000,000 on the Closing Date, as such amount may be adjusted from time to time in accordance with the terms of this Agreement.

“**Revolving Credit Exposure**” means, as to each Revolving Credit Lender, the sum of the amount of the Outstanding Amount of such Revolving Credit Lender’s Revolving Credit Loans and its Pro Rata Share or other applicable share provided for under this Agreement of the Dollar Amount of the L/C Obligations and the Swing Line Obligations and Protective Advances at such time.

“**Revolving Credit Facility**” means, at any time, the aggregate amount of the Revolving Credit Commitments at such time.

“**Revolving Credit Lender**” means, at any time, any Lender that has a Revolving Credit Commitment at such time or, if Revolving Credit Commitments have terminated, Revolving Credit Exposure.

“**Revolving Credit Loan**” has the meaning set forth in Section 2.01(b).

“**Revolving Credit Note**” means a promissory note of the Borrower payable to any Revolving Credit Lender or its registered assigns, in substantially the form of Exhibit C-1 hereto, evidencing the aggregate Indebtedness of the Borrower to such Revolving Credit Lender resulting from the Revolving Credit Loans made by such Revolving Credit Lender to the Borrower.

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

“**Same Day Funds**” means immediately available funds.

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

“**Secured Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“**Secured Parties**” means, collectively, the Administrative Agent, the Lenders, the Hedge Banks, Cash Management Banks and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Security Agreement**” means an ABL Security Agreement substantially in the form of Exhibit E.

“**Security Agreement Supplement**” has the meaning specified in the Security Agreement.

“**Seller**” has the meaning specified in the preliminary statements to this Agreement.

“**Senior Notes**” means the \$250,000,000 in aggregate principal amount of the Borrower’s 8.125% senior unsecured notes due 2020 and any Registered Equivalent Notes having substantially identical terms and issued pursuant to the Senior Notes Indenture in exchange for the initial, unregistered senior unsecured notes.

“**Senior Notes Indenture**” means the Indenture for the Senior Notes, dated as of January 31, 2012, between the Borrower and U.S. Bank, National Association, as trustee, as the same may be amended, modified, supplemented, replace or refinanced to the extent not prohibited by this Agreement.

“**Solvent**” and “**Solvency**” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person and its Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of such Person and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) such Person and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and (d) such Person and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“**SPC**” has the meaning specified in Section 10.07(h).

“**Specified Junior Financing Obligations**” means any obligations in respect of any Junior Financing in respect of which any Loan Party is an obligor in a principal amount in excess of the Threshold Amount.

“**Specified Representations**” means those representations and warranties made by the Borrower in Sections 5.01(a), 5.01(b)(ii), 5.02(a), 5.02(b)(i), 5.02(b)(iii), 5.03 (to the extent related to consents or approvals under Organization Documents of any Loan Party or under any material Law), 5.04, 5.12, 5.16, 5.17, 5.18 and 5.19 (subject, in the case of Section 5.19, to the proviso at the end of Section 4.01(a)).

“**Specified Transaction**” means any Investment that results in a Person becoming a Restricted Subsidiary, any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, any Permitted Acquisition or any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower, any Investment constituting an acquisition of assets constituting a business unit, line of business or division of, or all or substantially all of the Equity Interests of, another Person or any Disposition of a business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise, or any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of

credit), Restricted Payment, Incremental Revolving Credit Commitment or Incremental Revolving Loan that by the terms of this Agreement requires such test to be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect.”

“**Speculative Grade Rating**” shall mean with respect to any Person, such Person has at least the minimum rating indicated below from two out of the three ratings agencies named below:

Ratings Agency	Minimum Rating
S&P	BB- (stable)
Moody’s	Ba3 (stable)
Fitch	BB- (stable)

“**Split Brands**” means the Debrox and Gly-Oxide brands.

“**Split Brands Acquisition**” has the meaning specified in the preliminary statements to this Agreement.

“**Split Brands Acquisition Agreement**” has the meaning specified in the preliminary statements to this Agreement.

“**Split Brands Cutoff Date**” means July 31, 2012.

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which (i) a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, (ii) more than half of the issued share capital is at the time beneficially owned or (iii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” means any Guarantor other than Holdings.

“**Successor Company**” has the meaning specified in Section 7.04(d).

“**Supermajority Lenders**” means, at any time, Lenders (other than Defaulting Lenders) having Commitments aggregating more than 66²/₃% of the Aggregate Commitments, or if the Commitments have been terminated, Lenders (other than Defaulting Lenders) whose percentage of the Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and all L/C Obligations (with the aggregate Dollar Amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition) aggregate more than 66²/₃% of

such Outstanding Amount.

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

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

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Facility” means the swing line loan facility made available by the Swing Line Lenders pursuant to Section 2.04.

“Swing Line Lender” means Citi, in its capacity as provider of Swing Line Loans or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B hereto.

“Swing Line Note” means a promissory note of the Borrower payable to any Swing Line Lender or its registered assigns, in substantially the form of Exhibit C-2 hereto, evidencing the aggregate Indebtedness of the Borrower to such Swing Line Lender resulting from the Swing Line Loans.

“Swing Line Obligations” means, as at any date of determination, the aggregate principal amount of all Swing Line Loans outstanding.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$15,000,000 and (b) the aggregate amount of the Revolving Credit Commitments. The Swing Line Sublimit is part of, and not in

addition to, the Revolving Credit Commitments.

“**Syndication Agent**” means Morgan Stanley Senior Funding, Inc., in its capacity as syndication agent.

“**Tax Group**” has the meaning specified in Section 7.06(h)(iii).

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

“**Term Agent**” means Citibank, N.A., in its capacity as administrative agent under the Term Loan Credit Agreement Documentation, or any successor administrative agent or collateral agent under the Term Loan Credit Agreement Documentation.

“**Term Loan Credit Agreement**” means that certain credit agreement dated as of the Closing Date, among Holdings, the Borrower, the Subsidiary Guarantors party thereto, the lenders party thereto and the Term Agent, as the same may be amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case as and to the extent permitted by this Agreement and the Term Loan Intercreditor Agreement.

“**Term Loan Credit Agreement Documentation**” means the Term Loan Credit Agreement and all security agreements, guarantees, pledge agreements and other agreements or instruments executed in connection therewith.

“**Term Loan Facility Indebtedness**” means (i) Indebtedness of Holdings, the Borrower or any Restricted Subsidiary outstanding under the Term Loan Credit Agreement Documentation and (ii) any Swap Contract permitted pursuant to Article VII hereof that is entered into by and between the Borrower or any Restricted Subsidiary and any Person that is a lender under the Term Loan Credit Agreement or an Affiliate of a lender under the Term Loan Credit Agreement at the time such Swap Contract is entered into.

“**Term Loan Intercreditor Agreement**” means that certain Intercreditor Agreement substantially in the form of Exhibit L hereof, dated as of the date hereof, among the administrative agent under the Term Loan Credit Agreement, the Administrative Agent on behalf of the Secured Parties, and the Loan Parties, as amended and in effect from time to time.

“**Test Period**” means, for any date of determination under this Agreement, the four consecutive fiscal quarters of the Borrower most recently ended as of such date of determination.

“**Threshold Amount**” means \$25,000,000.

“**Total Assets**” means the total assets of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Borrower delivered pursuant to Section 6.01(a) or (b) or, for the period prior to the time any such statements are so

delivered pursuant to Section 6.01(a) or (b), the Pro Forma Financial Statements.

“**Total Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Total Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“**Transaction Expenses**” means any fees or expenses incurred or paid by Holdings, the Borrower or any of their respective Subsidiaries in connection with the Transactions (including expenses in connection with hedging transactions), this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

“**Transactions**” means, collectively, (a) the Acquisition and other related transactions contemplated by the Acquisition Agreement, (b) the issuance of the Senior Notes, (c) the funding of the term loans under the Term Loan Credit Agreement on the Closing Date and the execution and delivery of Loan Documents to be entered into on the Closing Date, (d) the Refinancing and (e) the payment of Transaction Expenses.

“**Transferred Guarantor**” has the meaning specified in Section 11.09.

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

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

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

“**United States Tax Compliance Certificate**” has the meaning set forth in Section 3.01(d)(ii)(C) and is in substantially the form of Exhibit I hereto.

“**Unreimbursed Amount**” has the meaning set forth in Section 2.03(c)(i).

“**Unrestricted Subsidiary**” means any Subsidiary of the Borrower designated by the board of directors of the Borrower as an Unrestricted Subsidiary pursuant to Section 6.14 subsequent to the Closing Date.

“**Unused Commitment**” means, on any day, (a) the then Aggregate Commitments minus (b) the sum of (i) the principal amount of Loans of the Borrower then outstanding and (ii) the then L/C Obligations.

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

“Weekly Reporting Period” means any period beginning on the date that is five (5) Business Days following the date when the Excess Availability is less than the greater of (x) 20.0% of the Aggregate Commitments and (y) \$10,000,000 and ending on the date that is five (5) Business Days following the date when the Excess Availability is equal to or greater than the greater of (x) 20.0% of the Aggregate Commitments and (y) \$10,000,000.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness.

“wholly owned” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

Section 1.02 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.
- (c) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.
- (d) The term “including” is by way of example and not limitation.
- (e) The word “or” is not exclusive.
- (f) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- (g) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”
- (h) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any

other Loan Document.

(i) For purposes of determining compliance with any Section of Article VII at any time, in the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), Disposition, Restricted Payment, Affiliate transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of one or more than one of the categories of transactions permitted pursuant to any clause of such Sections, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time.

Section 1.03 Accounting Terms.

All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein.

Section 1.04 Rounding.

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

Section 1.05 References to Agreements, Laws, Etc.

Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by the Loan Documents; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day.

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

Section 1.07 Timing of Payment of Performance.

When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.08 Cumulative Credit Transactions.

If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

Section 1.09 Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Total Leverage Ratio, the Secured Leverage Ratio, the Consolidated First Lien Net Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio shall be calculated in the manner prescribed by this Section 1.09; *provided* that notwithstanding anything to the contrary in clauses (b), (c) or (d) of this Section 1.09, when calculating the Consolidated First Lien Net Leverage Ratio, the Total Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio, each as applicable, for purposes of (i) the definition of “Applicable ECF Percentage of Excess Cash Flow” and (ii) determining actual compliance (and not whether the Payment Condition has been satisfied) with Section 7.11, the events described in this Section 1.09 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to the “Test Period” for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower); *provided* that, the provisions of this sentence shall not apply for purposes of calculating the Consolidated First Lien Net Leverage Ratio, the Total Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio for purposes of the definition of “Applicable ECF Percentage of Excess Cash Flow” and determining actual compliance with Section 7.11 (and not for the purpose of determining whether the Payment Condition has been satisfied), each of which shall be based on the financial statements delivered pursuant to Section 6.01(a) or (b), as applicable, for the relevant Test Period.

(b) For purposes of calculating any financial ratio or test, Specified Transactions (with any incurrence or repayment of any Indebtedness in connection therewith to be subject to clause (d) of this Section 1.09) that have been made (i) during the applicable Test Period and (ii) if applicable as described in clause (a) above, subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.09, then such financial ratio or test shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.09.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower and include, for the avoidance of doubt, the amount of “run-rate” cost savings, operating expense reductions and synergies projected by the Borrower in good faith to be realized as a result of specified actions taken, committed to be taken or expected to be taken (calculated on a *pro forma* basis as though

such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period) and “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or expected to be taken (including any savings expected to result from the elimination of a public target’s compliance costs with public company requirements) net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of such financial ratios or tests and during any subsequent Test Period in which the effects thereof are expected to be realized relating to such Specified Transaction; *provided* that (A) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (B) such actions have been taken or with respect to which substantial steps have been taken (in the good faith determination of the Borrower) within eighteen (18) months after the date of such Specified Transaction, and (C) no amounts shall be added pursuant to this clause (c) to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, with respect to such period; *provided* that any increase to Consolidated EBITDA as a result of cost savings, operating expense reductions and synergies pursuant to this Section 1.09(c) shall be subject to the limitation set forth in the proviso of clause (viii) of the definition of Consolidated EBITDA.

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of any financial ratio or test (in each case, other than Indebtedness incurred or repaid under any revolving credit facility), (i) during the applicable Test Period or (ii) subject to clause (a) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period (or the first day of the applicable Test Period solely in the case of the Consolidated Fixed Charge Coverage Ratio).

(e) If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Consolidated Fixed Charge Coverage Ratio is made had been the applicable rate for the entire period (taking into account any hedging obligations applicable to such Indebtedness); *provided*, in the case of repayment of any Indebtedness, to the extent actual interest related thereto was included during all or any portion of the applicable Test Period, the actual interest may be used for the applicable portion of such Test Period. Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or Restricted Subsidiary may designate.

Section 1.10 Currency Generally.

For purposes of determining compliance with Sections 7.01, 7.02 and 7.03 with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred,

made or acquired, was permitted hereunder). All determinations of the Dollar-equivalent amount of any amounts denominated in a currency other than Dollars shall be made by the Administrative Agent acting in its Permitted Discretion.

Section 1.11 Letters of Credit.

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Amount of the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Amount of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE II.
THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01 The Loans.

(a) [Reserved].

(b) *The Revolving Credit Borrowings.* Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make Revolving Credit Loans denominated in Dollars pursuant to Section 2.02 from its applicable Lending Office (each such loan, a “**Revolving Credit Loan**”) to the Borrower from time to time, on any Business Day during the period from the Closing Date until the Maturity Date, in an aggregate principal amount not to exceed at any time outstanding the amount of such Lender’s Revolving Credit Commitment; *provided* that after giving effect to any Revolving Credit Borrowing, (x) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Lender’s Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all L/C Obligations, plus such Lender’s Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all Swing Line Loans and Protective Advances, shall not exceed the lesser of (i) such Lender’s Revolving Credit Commitment at such time and (ii) such Lender’s Pro Rata Share of the Borrowing Base at such time and (y) the aggregate outstanding amount of Total Outstandings shall not exceed the Line Cap at such time. Within the limits of each Lender’s Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(b), prepay under Section 2.05, and reborrow under this Section 2.01(b). Revolving Credit Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

Section 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Revolving Credit Borrowing, each conversion of Revolving Credit Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower’s irrevocable notice, to the Administrative Agent (*provided* that the notices in respect of the initial Credit Extensions may be conditioned on the closing of the Acquisition), which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (New York, New York time) (1) three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans or any conversion of Base Rate Loans to Eurocurrency Rate Loans, and (2) on

the requested date of any Borrowing of Base Rate Loans; *provided* that the notice referred to in subclause (1) above may be delivered no later than one (1) Business Day prior to the Closing Date in the case of initial Credit Extensions. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Section 2.14, each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000, in excess thereof. Except as provided in Section 2.03(c), 2.04(c), 2.14 or 2.18(b), each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Revolving Credit Borrowing, a conversion of Revolving Credit Loans from one Type to the other or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Revolving Credit Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) wire instructions of the account(s) to which funds are to be disbursed (it being understood, for the avoidance of doubt, that the amount to be disbursed to any particular account may be less than the minimum or multiple limitations set forth above so long as the aggregate amount to be disbursed to all such accounts pursuant to such Borrowing meets such minimums and multiples). If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fail to give a timely notice requesting a conversion or continuation, then the applicable Revolving Credit Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation described in Section 2.02(a). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. The Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account(s) of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent; *provided* that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Borrower, there are Swing Line Loans or L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowing, second, to the payment in full of any such Swing Line Loans, and third, to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. During the occurrence and continuation of an Event of Default, the Administrative Agent or the Required Lenders may require that

no Loans may be converted to or continued as Eurocurrency Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Citi's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than four (4) Interest Periods in effect; *provided* that after the establishment of any new Class of Loans pursuant to an Extension Amendment, the number of Interest Periods otherwise permitted by this Section 2.02(e) shall increase by three (3) Interest Periods for each applicable Class so established.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(g) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share or other applicable share provided for under this Agreement available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (b) above, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Overnight Rate plus any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(g) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.03 Letters of Credit.

(a) *The Letter of Credit Commitment.*

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the other Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit at sight denominated in Dollars for the account of the Borrower (*provided* that any Letter of Credit may be for the benefit of any Subsidiary of the Borrower) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drafts under the Letters of Credit and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.03; *provided* that no L/C Issuer shall be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit if as of the date of such L/C Credit Extension and after giving effect thereto, (x) the Revolving Credit Exposure of any Revolving Credit Lender would exceed such Lender's Revolving Credit Commitment, (y) the Total Outstandings would exceed the Line Cap at such time or (z) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) An L/C Issuer shall be under no obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or direct that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which such L/C Issuer is not otherwise compensated hereunder);

(B) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless (1) each Appropriate Lender has approved of such expiration date or (2) the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been cash collateralized;

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Credit Lenders have approved such expiry date;

(D) the issuance of such Letter of Credit would violate any policies of the L/C Issuer applicable to letters of credit generally; and

(E) any Revolving Credit Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iii) An L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

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

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the relevant L/C Issuer and the Administrative Agent not later than 12:30 p.m. at least two (2) Business Days prior to the proposed issuance date or date of amendment, as the case may be; or, in each case, such later date and time as the relevant L/C Issuer may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer: (a) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (b) the amount thereof; (c) the expiry date thereof; (d) the name and address of the beneficiary thereof; (e) the documents to be presented by such beneficiary in case of any drawing thereunder; (f) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (g) such other matters as the relevant L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the relevant L/C Issuer may reasonably request.

(ii) Promptly after receipt of any Letter of Credit Application, the relevant L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by the relevant L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower (or its applicable Subsidiary) or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the relevant L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share or other applicable share provided for under this Agreement times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the relevant L/C Issuer shall agree to issue a Letter of Credit that has automatic extension provisions (each, an "**Auto-Extension Letter of Credit**"); *provided* that any such Auto-Extension Letter of Credit must permit the relevant L/C Issuer to prevent any such extension at least once in each twelve month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-extension Notice Date**") in each such twelve month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the relevant L/C Issuer, the Borrower shall not be required to make a specific request to the relevant L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have

authorized (but may not require) the relevant L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; *provided* that the relevant L/C Issuer shall not permit any such extension if (A) the relevant L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its extended form under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-extension Notice Date from the Administrative Agent, any Revolving Credit Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied.

(iv) Promptly after issuance of any Letter of Credit or any amendment to a Letter of Credit, the relevant L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) *Drawings and Reimbursements; Funding of Participations.* (i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant L/C Issuer shall notify promptly the Borrower and the Administrative Agent thereof. Not later than 11:00 a.m. on the first Business Day immediately following any payment by an L/C Issuer under a Letter of Credit with notice to the Borrower (each such date, an "**Honor Date**"), the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing in Dollars; *provided* that if such reimbursement is not made on the date of drawing, the Borrower shall pay interest to the relevant L/C Issuer on such amount at the rate applicable to Base Rate Loans (without duplication of interest payable on L/C Borrowings). The L/C Issuer shall notify the Borrower of the Dollar Amount of the drawing promptly following the determination or revaluation thereof. If the Borrower fails to so reimburse such L/C Issuer by such time, the Administrative Agent shall promptly notify each Appropriate Lender of the Honor Date, the amount of the unreimbursed drawing (the "**Unreimbursed Amount**"), and the amount of such Appropriate Lender's Pro Rata Share or other applicable share provided for under this Agreement thereof. In such event, the Borrower shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans but subject to the amount of the unutilized portion of the Revolving Credit Commitments of the Appropriate Lenders and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice or the requirement that the Total Outstandings not exceed the Line Cap at such time). Any notice given by an L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(i) Each Appropriate Lender (including any Lender acting as an L/C Issuer) shall upon any notice pursuant to Section 2.03(c)(i), whether or not the Total Outstandings exceed the Line Cap at such time before or after such Borrowing make funds available to the Administrative Agent for the account of the relevant L/C Issuer in Dollars at the Administrative Agent's Office for payments in an amount equal to its Pro Rata Share or other applicable share provided for under this Agreement of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Appropriate Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the relevant L/C Issuer.

(ii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving

Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the relevant L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Appropriate Lender's payment to the Administrative Agent for the account of the relevant L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iii) Until each Appropriate Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the relevant L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such amount shall be solely for the account of the relevant L/C Issuer.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse an L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the relevant L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the relevant L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(v) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the relevant L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect. A certificate of the relevant L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) *Repayment of Participations.*

(i) If, at any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share or other applicable share provided for under this Agreement thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the Dollar Amount received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Appropriate Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Pro Rata Share or other applicable share provided for under this Agreement thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

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

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

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

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

(iv) any payment by the relevant L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the relevant L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guaranty or any other guarantee, for all or any of the Obligations of any Loan Party in respect of such Letter of Credit; or

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

provided that the foregoing shall not excuse any L/C Issuer from liability to Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are waived by the Borrower to the extent permitted by applicable Law) suffered by the Borrower that are caused by such L/C Issuer's gross negligence or willful misconduct as determined in a final and non-appealable judgment

by a court of competent jurisdiction when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(f) *Role of L/C Issuers.* Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the relevant L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, any Agent-Related Person nor any of the respective correspondents, participants or assignees of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Lenders holding a majority of the Revolving Credit Commitments, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided* that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of any L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.03(e); *provided* that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit, in each case as determined in a final and non-appealable judgment by a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no L/C Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) *Cash Collateral.* If (i) as of the Letter of Credit Expiration Date or at any time that the Revolving Credit Commitments are voluntarily terminated, any Letter of Credit issued to the Borrower may for any reason remain outstanding and partially or wholly undrawn, (ii) any Event of Default occurs and is continuing and the Administrative Agent or the Lenders holding a majority of the Revolving Credit Commitments, as applicable, require the Borrower to Cash Collateralize the L/C Obligations pursuant to Section 8.02 or (iii) an Event of Default set forth under Section 8.01(f) occurs and is continuing, the Borrower shall Cash Collateralize (x) in the case of clause (i), 103% and (y) in the case of clauses (ii) and (iii), 100%, in each case of the then Outstanding Amount of all of its L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such L/C Borrowing or the Letter of Credit Expiration Date, as the case may be), and shall do so not later than 2:00 P.M., New York City time, on (x) in the case of the immediately preceding clauses (i) through (iii), (1) the Business Day that the Borrower receives notice thereof, if such notice is received on such day prior to 12:00 Noon, New York City time, or (2) if clause (1) above does not apply, the Business Day immediately following the day that the Borrower receives such notice and (y) in the case of the immediately preceding clause (iii), the Business

Day on which an Event of Default set forth under Section 8.01(f) occurs or, if such day is not a Business Day, the Business Day immediately succeeding such day. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent, the L/C Issuer or the Swing Line Lender, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by the Defaulting Lender). For purposes hereof, “**Cash Collateralize**” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the relevant L/C Issuer and the Appropriate Lenders, as collateral for the L/C Obligations, cash or deposit account balances (“**Cash Collateral**”) pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the relevant L/C Issuer (which documents are hereby consented to by the Appropriate Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuers and the Revolving Credit Lenders of the applicable Facility, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked accounts at the Administrative Agent and may be invested in readily available Cash Equivalents. If at any time the Administrative Agent determines that any funds held as Cash Collateral are expressly subject to any right or claim of any Person other than the Administrative Agent (on behalf of the Secured Parties) or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in the deposit accounts at the Administrative Agent as aforesaid, an amount equal to the excess of (a) such aggregate Outstanding Amount over (b) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Law, to reimburse the relevant L/C Issuer. To the extent the amount of any Cash Collateral exceeds the then Outstanding Amount of such L/C Obligations and so long as no Event of Default has occurred and is continuing, the excess shall be refunded to the Borrower. To the extent any Event of Default giving rise to the requirement to Cash Collateralize any Letter of Credit pursuant to this Section 2.03(g) is cured or otherwise waived by the Required Lenders, then so long as no other Event of Default has occurred and is continuing, all Cash Collateral pledged to Cash Collateralize such Letter of Credit shall be refunded to the Borrower. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(h) *Letter of Credit Fees.* The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender for the applicable Revolving Credit Facility in accordance with its Pro Rata Share or other applicable share provided for under this Agreement a Letter of Credit fee for each Letter of Credit issued pursuant to this Agreement equal to the Applicable Rate times the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum Dollar Amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit); *provided, however,* any Letter of Credit fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Pro Rata Shares allocable to such Letter of Credit pursuant to Section 2.17(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for

its own account. Such Letter of Credit fees shall be computed on a quarterly basis in arrears. Such Letter of Credit fees shall be due and payable in Dollars on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) *Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers.* The Borrower shall pay directly to each L/C Issuer for its own account a fronting fee with respect to each Letter of Credit issued by it to any Loan Party equal to 0.125% per annum (or such other lower amount as may be mutually agreed by the Borrower and the applicable L/C Issuer) of the maximum Dollar Amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit) or such lesser fee as may be agreed with such L/C Issuer. Such fronting fees shall be computed on a quarterly basis in arrears. Such fronting fees shall be due and payable in Dollars on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. In addition, the Borrower shall pay directly to each L/C Issuer for its own account with respect to each Letter of Credit issued to the Loan Parties the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable within ten (10) Business Days of demand and are nonrefundable.

(j) *Conflict with Letter of Credit Application.* Notwithstanding anything else to the contrary in this Agreement or any Letter of Credit Application, in the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(k) *Addition of an L/C Issuer.* A Revolving Credit Lender reasonably acceptable to the Borrower and the Administrative Agent may become an additional L/C Issuer hereunder pursuant to a written agreement among the Borrower, the Administrative Agent and such Revolving Credit Lender. The Administrative Agent shall notify the Revolving Credit Lenders of any such additional L/C Issuer.

(l) [Reserved.]

(m) *Provisions Related to Extended Revolving Credit Commitments.* If the Letter of Credit Expiration Date in respect of any tranche of Revolving Credit Commitments occurs prior to the expiry date of any Letter of Credit, then (i) if consented to by the L/C Issuer which issued such Letter of Credit, if one or more other tranches of Revolving Credit Commitments in respect of which the Letter of Credit Expiration Date shall not have so occurred are then in effect, such Letters of Credit for which consent has been obtained shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Credit Lenders to purchase participations therein and to make Revolving Credit Loans and payments in respect thereof pursuant to Section 2.03(c) and (d)) under (and ratably participated in by Lenders pursuant to) the Revolving Credit Commitments in respect of such non-terminating tranches up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Credit Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated) and (ii) to the extent not reallocated pursuant to immediately preceding clause (i), the Borrower shall Cash Collateralize any such Letter of Credit in

accordance with Section 2.03(g). Commencing with the maturity date of any tranche of Revolving Credit Commitments, the sublimit for Letters of Credit shall be agreed solely with the L/C Issuer.

(n) *Letter of Credit Reports.* For so long as any Letter of Credit issued by an L/C Issuer is outstanding, such L/C Issuer shall deliver to the Administrative Agent on the last Business Day of each calendar month, and on each date that an L/C Credit Extension occurs with respect to any such Letter of Credit, a report in the form of Exhibit M, appropriately completed with the information for every outstanding Letter of Credit issued by such L/C Issuer.

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

Section 2.04 Swing Line Loans.

(a) *The Swing Line.* Subject to the terms and conditions set forth herein, Citi, in its capacity as Swing Line Lender agrees to make loans in Dollars to the Borrower (each such loan, a "**Swing Line Loan**"), from time to time on any Business Day during the period beginning on the Business Day after the Closing Date and until the Maturity Date of the Revolving Credit Facility in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Swing Line Lender's Revolving Credit Commitment; *provided* that, after giving effect to any Swing Line Loan, (i) the Revolving Credit Exposure (plus the amount of any Protective Advances) shall not exceed the Line Cap at such time and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender (other than the relevant Swing Line Lender), plus such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all Swing Line Loans shall not exceed the lesser of (x) such Lender's Revolving Credit Commitment then in effect and (y) such Lender's Pro Rata Share of the Borrowing Base then in effect; *provided, further*, that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Pro Rata Share or other applicable share provided for under this Agreement times the amount of such Swing Line Loan.

(b) *Borrowing Procedures.* Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date and shall specify (i) the amount to be borrowed, which shall be a minimum of \$250,000 (and any amount in excess of \$250,000 shall be an integral

multiple of \$100,000) and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the relevant Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice (by telephone or in writing), the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, such Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the relevant Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 5:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower. Notwithstanding anything to the contrary contained in this Section 2.04 or elsewhere in this Agreement, the Swing Line Lender shall not be obligated to make any Swing Line Loan at a time when a Revolving Credit Lender is a Defaulting Lender unless the Swing Line Lender has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate the Swing Line Lender's Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender's or Defaulting Lenders' participation in such Swing Line Loans, including by Cash Collateralizing, or obtaining a backstop letter of credit from an issuer reasonably satisfactory to the Swing Line Lender to support, such Defaulting Lender's or Defaulting Lenders' Pro Rata Share of the outstanding Swing Line Loans.

(c) *Refinancing of Swing Line Loans.*

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes such Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Loan in an amount equal to such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the amount of Swing Line Loans of the Borrower then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the aggregate Revolving Credit Commitments and the conditions set forth in Section 4.02. The relevant Swing Line Lender shall furnish the Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Pro Rata Share or other applicable share provided for under this Agreement of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan, as applicable, to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the relevant Swing Line Lender as set forth herein shall be deemed to be a request by such Swing Line

Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by the Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (ii) shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) (but not to purchase and fund risk participations in Swing Line Loans) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay the applicable Swing Line Loans, together with interest as provided herein.

(d) *Repayment of Participations.*

(i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the relevant Swing Line Lender receives any payment on account of such Swing Line Loan, such Swing Line Lender will distribute to such Lender its Pro Rata Share or other applicable share provided for under this Agreement of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by such Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Credit Lender shall pay to the Swing Line Lender its Pro Rata Share or other applicable share provided for under this Agreement thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of a Swing Line Lender.

(e) *Interest for Account of Swing Line Lender.* The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Pro

Rata Share of any Swing Line Loan, interest in respect of such Pro Rata Share shall be solely for the account of the Swing Line Lender.

(f) *Payments Directly to Swing Line Lender.* The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

(g) *Provisions Related to Extended Revolving Credit Commitments.* If the maturity date shall have occurred in respect of any tranche of Revolving Credit Commitments (the “**Expiring Credit Commitment**”) at a time when another tranche or tranches of Revolving Credit Commitments is or are in effect with a longer maturity date (each a “**non-Expiring Credit Commitment**” and collectively, the “**non-Expiring Credit Commitments**”), then with respect to each outstanding Swing Line Loan, if consented to by the applicable Swing Line Lender, on the earliest occurring maturity date such Swing Line Loan shall be deemed reallocated to the tranche or tranches of the non-Expiring Credit Commitments on a pro rata basis; *provided* that (x) to the extent that the amount of such reallocation would cause the aggregate credit exposure to exceed the aggregate amount of such non-Expiring Credit Commitments, immediately prior to such reallocation the amount of Swing Line Loans to be reallocated equal to such excess shall be repaid or Cash Collateralized and (y) notwithstanding the foregoing, if a Default or Event of Default has occurred and is continuing, the Borrower shall still be obligated to pay Swing Line Loans allocated to the Revolving Credit Lenders holding the Expiring Credit Commitments at the maturity date of the Expiring Credit Commitment or if the Loans have been accelerated prior to the maturity date of the Expiring Credit Commitment. Commencing with the maturity date of any tranche of Revolving Credit Commitments, the sublimit for Swing Line Loans shall be agreed solely with the Swing Line Lender.

Section 2.05 Prepayments.

(a) *Optional.*

(i) The Borrower may, upon notice to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay any Class or Classes of Revolving Credit Loans in whole or in part without premium or penalty; *provided* that (1) such notice must be received by the Administrative Agent not later than 11:00 a.m. (New York City time) (A) three (3) Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (B) on the date of prepayment of Base Rate Loans; (2) any prepayment of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000 in excess thereof; and (3) any prepayment of Base Rate Loans shall be in a minimum principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender’s Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(a), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares or other applicable share provided for under this Agreement.

(ii) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; *provided* that (1) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (2) any such prepayment shall be in a minimum principal amount of \$250,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(iii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(a)(i) or 2.05(a)(ii) if such prepayment would have resulted from a refinancing of the applicable Facility, which refinancing shall not be consummated or shall otherwise be delayed.

(b) *Mandatory.*

(i) If for any reason the aggregate Outstanding Amount of Revolving Credit Loans, Swing Line Loans, Protective Advances and L/C Obligations at any time exceeds the Line Cap then in effect, the Borrower shall, within three (3) Business Days, prepay Revolving Credit Loans and Swing Line Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided* that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b)(iv) unless after the prepayment in full of the Revolving Credit Loans and Swing Line Loans such aggregate Outstanding Amount exceeds the Line Cap.

(ii) Except during the continuance of a Cash Dominion Period and except as otherwise provided in Section 6.19(f) or Section 8.03, any Net Proceeds and other payments received by the Administrative Agent shall be applied as the Borrower shall direct the Administrative Agent in writing. Notwithstanding the foregoing, on each Business Day during any Cash Dominion Period, the Administrative Agent shall apply all funds credited to the Concentration Account the previous Business Day (whether or not immediately available) first to prepay any Protective Advances that may be outstanding, second to prepay any Swing Line Loans outstanding, third to prepay any Revolving Credit Loans and fourth to Cash Collateralize outstanding L/C Obligations at one hundred three percent (103%).

(c) *Interest, Funding Losses, Etc.* All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.05.

Notwithstanding any of the other provisions of this Section 2.05, so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under this Section 2.05, prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such Eurocurrency Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in their sole discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in

accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

Section 2.06 Termination or Reduction of Commitments.

(a) *Optional.* The Borrower may, upon written notice to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; *provided that* (i) any such notice shall be received by the Administrative Agent three (3) Business Day prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000, or any whole multiple of \$1,000,000 in excess thereof or, if less, the entire amount thereof and (iii) if, after giving effect to any reduction of the Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Credit Facility, such sublimit shall be automatically reduced by the amount of such excess. Except as provided above, the amount of any such Commitment reduction shall not be applied to the Letter of Credit Sublimit or the Swing Line Sublimit unless otherwise specified by the Borrower. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of any Commitments if such termination would have resulted from a refinancing of all of the applicable Facility, which refinancing shall not be consummated or otherwise shall be delayed.

(b) *Mandatory.* The Revolving Credit Commitment of each Revolving Credit Lender shall automatically and permanently terminate on the Maturity Date.

(c) *Application of Commitment Reductions; Payment of Fees.* The Administrative Agent will promptly notify the Appropriate Lenders of any termination or reduction of unused portions of the Letter of Credit Sublimit or the Swing Line Sublimit or the unused Commitments of any Class under this Section 2.06. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced by such Lender's Pro Rata Share of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.07). All commitment fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

Section 2.07 Repayment of Loans.

(a) [Reserved].

(b) *Revolving Credit Loans.* The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for the Revolving Credit Facility the aggregate principal amount of all Revolving Credit Loans under such Facility outstanding on such date.

(c) *Swing Line Loans.* The Borrower shall repay the aggregate principal amount of its Swing Line Loans on the earlier to occur of (i) the date five (5) Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Credit Facility.

(d) The Borrower shall repay to the Administrative Agent the then-unpaid amount of each

Protective Advance on the earlier of the Maturity Date and demand by the Administrative Agent.

Section 2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan (other than a Swing Line Loan) shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate, for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for Revolving Credit Loans.

(b) During the continuance of a Default under Section 8.01(a), the Borrower shall pay interest on past due amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such amounts (including interest on past due interest) shall be due and payable upon demand.

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

Section 2.09 Fees.

In addition to certain fees described in Sections 2.03(h) and (i):

(a) *Commitment Fee.* The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Credit Lender under each Facility in accordance with its Pro Rata Share or other applicable share provided for under this Agreement, a commitment fee equal to the Commitment Fee Rate times the actual daily amount by which the aggregate Revolving Credit Commitment for the applicable Facility exceeds the sum of (A) the Outstanding Amount of Revolving Credit Loans for such Facility and (B) the Outstanding Amount of L/C Obligations for such Facility; *provided* that any commitment fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; and *provided, further*, that no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. The commitment fee on each Revolving Credit Facility shall accrue at all times from the Closing Date until the Maturity Date for the Revolving Credit Facility, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date during the first full fiscal quarter to occur after the Closing Date, and on the Maturity Date for the Revolving Credit Facility. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the

Commitment Fee Rate during any quarter, the actual daily amount shall be computed and multiplied by the Commitment Fee Rate separately for each period during such quarter that such Commitment Fee Rate was in effect.

(b) *Other Fees.* The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

Section 2.10 Computation of Interest and Fees.

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate) shall be made on the basis of a year of three hundred and sixty-five (365) days, or three hundred and sixty-six (366) days, as applicable, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Indebtedness.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records and, in the case of the Administrative Agent, entries in the Register, evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Sections 2.11(a) and (b), and by each Lender in its account or accounts pursuant to Sections 2.11(a) and (b), shall be *prima facie* evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12 Payments Generally.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share provided for under this Agreement) of such payment in like funds as received by wire transfer to such Lender's applicable Lending Office. All payments received by the Administrative Agent after 2:00 p.m., shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; *provided* that, if such extension would cause payment of interest on or principal of Eurocurrency Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the applicable Overnight Rate from time to time in effect. When

such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent manifest error.

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

(e) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit and Swing Line Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

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

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may (to the fullest extent permitted by mandatory provisions of applicable Law), but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the sum of (a) the Outstanding Amount of all Loans outstanding at such time and (b) the Outstanding Amount of all L/C Obligations outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.13 Sharing of Payments.

If, other than as expressly provided elsewhere herein, any Lender shall obtain payment in respect

of any principal or interest on account of the Loans made by it, or the participations in L/C Obligations and Swing Line Loans held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C Obligations or Swing Line Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal or interest on such Loans or such participations, as the case may be, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For avoidance of doubt, the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.14 Incremental Credit Extensions.

(a) *Incremental Commitments.* The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (an "**Incremental Commitment Request**"), request one or more increases in the amount of the Revolving Credit Commitments (a "**Revolving Commitment Increase**") or the establishment of one or more new revolving credit commitments (any such new commitments, collectively with any Revolving Commitment Increases, the "**Incremental Revolving Credit Commitments**"), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders.

(b) *Incremental Loans.* Any Incremental Revolving Credit Commitments effected through the establishment of one or more new revolving credit commitments made on an Incremental Facility Closing Date shall be designated a separate Class of Incremental Revolving Credit Commitments for all purposes of this Agreement. On any Incremental Facility Closing Date on which any Incremental Revolving Credit Commitments of any Class are effected through the establishment of one or more new revolving credit commitments (including through any Revolving Commitment Increase), subject to the

satisfaction of the terms and conditions in this Section 2.14, (i) each Incremental Revolving Credit Lender of such Class shall make its Commitment available to the Borrower (when borrowed, an **"Incremental Revolving Loan"**) in an amount equal to its Incremental Revolving Credit Commitment of such Class and (ii) each Incremental Revolving Credit Lender of such Class shall become a Lender hereunder with respect to the Incremental Revolving Credit Commitments of such Class and the Incremental Revolving Loans of such Class made pursuant thereto.

(c) *Incremental Commitment Request.* Each Incremental Commitment Request from the Borrower pursuant to this Section 2.14 shall set forth the requested amount and proposed terms of the relevant Incremental Revolving Credit Commitments. Incremental Revolving Credit Commitments may be provided by any existing Lender (but each existing Lender will not have an obligation to make any Incremental Revolving Credit Commitment, nor will the Borrower have any obligation to approach any existing lenders to provide any Incremental Revolving Credit Commitment) or by any other bank or other financial institution (any such other bank or other financial institution being called an **"Additional Lender"**) (each such existing Lender or Additional Lender providing such, an **"Incremental Revolving Credit Lender"**); *provided* that the Administrative Agent, each Swing Line Lender and each L/C Issuer shall have consented (not to be unreasonably withheld or delayed) to such Lender's or Additional Lender's providing such Revolving Commitment Increases to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Loans or Revolving Credit Commitments, as applicable, to such Lender or Additional Lender.

(d) *Effectiveness of Incremental Amendment.* The effectiveness of any Incremental Amendment, and the Incremental Revolving Credit Commitments thereunder, shall be subject to the satisfaction on the date thereof (the **"Incremental Facility Closing Date"**) of each of the following conditions:

(i) no Default or Event of Default shall exist after giving effect to such Incremental Revolving Credit Commitments and Incremental Revolving Loans made pursuant thereto on the Incremental Facility Closing Date;

(ii) after giving effect to such Incremental Revolving Credit Commitments, the conditions of Section 4.02(i) shall be satisfied (it being understood that all references to "the date of such Credit Extension" or similar language in such Section 4.02(i) shall be deemed to refer to the effective date of such Incremental Amendment); *provided* that for purposes of satisfying Section 4.02(i), only the Specified Representations shall be required to be true and correct to the extent the proceeds of such Incremental Revolving Loans are used to consummate a Permitted Acquisition;

(iii) [reserved];

(iv) each Incremental Revolving Credit Commitment shall be in an aggregate principal amount that is not less than \$7,500,000 and, if greater than \$7,500,000, shall be in an increment of \$1,000,000 (*provided* that such amount may be less than \$7,500,000 if such amount represents all remaining availability under the limit set forth in the next sentence); and

(v) the aggregate amount of the Incremental Revolving Credit Commitments shall not exceed \$100,000,000.

(e) *Required Terms.* The terms, provisions and documentation of the Incremental Revolving Loans and Incremental Revolving Credit Commitments, as the case may be, of any Class shall be as agreed between the Borrower and the applicable Incremental Revolving Credit Lenders providing such Incremental Revolving Credit Commitments, and except as otherwise set forth herein, to the extent not identical to the Revolving Credit Commitments existing on the Incremental Facility Closing Date, shall be reasonably satisfactory to Administrative Agent. In any event:

(i) the Incremental Revolving Credit Commitments and Incremental Revolving Loans shall be identical to the Revolving Credit Commitments and the Revolving Credit Loans, other than as set forth in Section 2.14(e)(ii); *provided* that notwithstanding anything to the contrary in this Section 2.14 or otherwise:

(A) any such Incremental Revolving Credit Commitments or Incremental Revolving Loans shall (x) rank *pari passu* in right of payment and of security with and (y) have the same Guarantees as, the Revolving Credit Loans,

(B) any such Incremental Revolving Credit Commitments or Incremental Revolving Loans shall require no scheduled amortization or mandatory commitment reduction prior to the Maturity Date for the existing Revolving Credit Commitments,

(C) the borrowing and repayment (except for (1) payments of interest and fees at different rates on Incremental Revolving Credit Commitments (and related outstandings), (2) repayments required upon the maturity date of the Incremental Revolving Credit Commitments and (3) repayment made in connection with a permanent repayment and termination of commitments (subject to clause (E) below)) of Loans with respect to Incremental Revolving Credit Commitments after the associated Incremental Facility Closing Date shall be made on a pro rata basis with all other Revolving Credit Commitments on the Incremental Facility Closing Date,

(D) subject to the provisions of Sections 2.03(m) and 2.04(g) to the extent dealing with Swing Line Loans and Letters of Credit which mature or expire after a maturity date when there exists Incremental Revolving Credit Commitments with a longer maturity date, all Swing Line Loans and Letters of Credit shall be participated on a pro rata basis by all Lenders with Commitments in accordance with their percentage of the Revolving Credit Commitments on the Incremental Facility Closing Date (and except as provided in Section 2.03(m) and Section 2.04(g), without giving effect to changes thereto on an earlier maturity date with respect to Swing Line Loans and Letters of Credit theretofore incurred or issued),

(E) permanent repayment of Revolving Credit Loans with respect to, and termination of, Incremental Revolving Credit Commitments after the associated Incremental Facility Closing Date shall be made on a pro rata basis with all other Revolving Credit Commitments on the Incremental Facility Closing Date, except that the Borrower shall be permitted to permanently repay and terminate commitments of any such Class on a better than pro rata basis as compared to any other Class with a later maturity date than such Class,

(F) assignments and participations of Incremental Revolving Credit Commitments and Incremental Revolving Loans shall be governed by the same assignment and participation

provisions applicable to Revolving Credit Commitments and Revolving Credit Loans on the Incremental Facility Closing Date, and

(G) any Incremental Revolving Credit Commitments may constitute a separate Class or Classes, as the case may be, of Commitments from the Classes constituting the applicable Revolving Credit Commitments prior to the Incremental Facility Closing Date; *provided* at no time shall there be Revolving Credit Commitments hereunder (including Incremental Revolving Credit Commitments, any original Revolving Credit Commitments and Extended Revolving Credit Commitments) which have more than four (4) different Maturity Dates.

(H) For the avoidance of doubt, all Incremental Revolving Credit Commitments shall be effectuated under the Loan Documents and the Administrative Agent shall be the sole administrative agent and collateral agent therefor.

(ii) the All-In Yield applicable to the Incremental Revolving Credit Commitments of each Class shall be determined by the Borrower and the applicable new Lenders and shall be set forth in each applicable Incremental Amendment; *provided, however*, that with respect to any Loans made under Incremental Revolving Credit Commitments, the All-In Yield applicable to such Incremental Revolving Credit Commitments shall not be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to outstanding Revolving Credit Commitments, as applicable, plus 50 basis points per annum unless the Applicable Rate with respect to the Revolving Credit Commitments is increased so as to cause the then applicable All-In Yield under this Agreement on each outstanding Class of Revolving Credit Commitments to equal the All-In Yield then applicable to the Incremental Revolving Loans, as applicable, minus 50 basis points.

(f) *Incremental Amendment.* Commitments in respect of Incremental Revolving Credit Commitment shall become Commitments (or in the case of an Incremental Revolving Credit Commitment to be provided by an existing Revolving Credit Lender, an increase in such Lender's applicable Revolving Credit Commitment), under this Agreement pursuant to an amendment (an "**Incremental Amendment**") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Incremental Revolving Credit Lender providing such Commitments and the Administrative Agent. The Incremental Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14. The Borrower will use the proceeds of the Incremental Revolving Credit Commitments for any purpose not prohibited by this Agreement. No Lender shall be obligated to provide any Incremental Revolving Credit Commitments, unless it so agrees.

(g) *Reallocation of Revolving Credit Exposure.* Upon any Incremental Facility Closing Date on which Incremental Revolving Credit Commitments are effected through an increase in the Revolving Credit Commitments pursuant to this Section 2.14, (i) each of the Revolving Credit Lenders shall assign to each of the Incremental Revolving Credit Lenders, and each of the Incremental Revolving Credit Lenders shall purchase from each of the Revolving Credit Lenders, at the principal amount thereof, such interests in the Incremental Revolving Credit Loans outstanding on such Incremental Facility Closing Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Credit Loans will be held by existing Revolving Credit Lenders and Incremental Revolving Credit Lenders ratably in accordance with their Revolving Credit Commitments after giving effect to the

addition of such Incremental Revolving Credit Commitments to the Revolving Credit Commitments, (ii) each Incremental Revolving Credit Commitment shall be deemed for all purposes a Revolving Credit Commitment and each Loan made thereunder shall be deemed, for all purposes, a Revolving Credit Loan and (iii) each Incremental Revolving Credit Lender shall become a Lender with respect to the Incremental Revolving Credit Commitments and all matters relating thereto. The Administrative Agent and the Lenders hereby agree that the minimum borrowing and prepayment requirements in Section 2.02 and 2.05(a) of this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence. Notwithstanding the foregoing, to the extent Extended Revolving Credit Commitments and Revolving Credit Commitments that are not Extended Revolving Credit Commitments are being increased on a non-pro rata basis, appropriate adjustments, as determined by the Administrative Agent, will be made to effectuate an appropriate allocation of such increase between such Revolving Credit Commitments.

(h) This Section 2.14 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.15 [Reserved].

Section 2.16 Extension of Revolving Credit Loans.

(a) [Reserved].

(b) *Extension of Revolving Credit Commitments*. The Borrower may, at any time and from time to time request that all or a portion of the Revolving Credit Commitments of a given Class (each, an “**Existing Revolver Tranche**”) be amended to extend the Maturity Date with respect to all or a portion of any principal amount of such Revolving Credit Commitments (any such Revolving Credit Commitments which have been so amended, “**Extended Revolving Credit Commitments**”) to a date no earlier than ninety-one (91) days after the latest Maturity Date for any Class of Commitments then outstanding and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Revolving Credit Commitments, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Revolver Tranche) (each, a “**Revolver Extension Request**”) setting forth the proposed terms of the Extended Revolving Credit Commitments to be established, which shall (x) be identical as offered to each Lender under such Existing Revolver Tranche (including as to the proposed interest rates and fees payable) and offered pro rata to each Lender under such Existing Revolver Tranche and (y) be identical to the Revolving Credit Commitments under the Existing Revolver Tranche from which such Extended Revolving Credit Commitments are to be amended, except that: (i) the Maturity Date of the Extended Revolving Credit Commitments may be delayed to a later date than the Maturity Date of the Revolving Credit Commitments of such Existing Revolver Tranche, to the extent provided in the applicable Extension Amendment; *provided, however*, that at no time shall there be Classes of Revolving Credit Commitments hereunder (including Extended Revolving Credit Commitments and Incremental Revolving Credit Commitments) which have more than four (4) different Maturity Dates; (ii) the Applicable Rate with respect to extensions of credit under the Extended Revolving Credit Commitments (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the Applicable Rate for extensions of credit under the Revolving Credit Commitments of such Existing Revolver Tranche, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Revolving Credit Commitments); and (iv) all borrowings

under the applicable Revolving Credit Commitments (*i.e.*, the Existing Revolver Tranche and the Extended Revolving Credit Commitments of the applicable Revolver Extension Series) and repayments thereunder shall be made on a pro rata basis (except for (I) payments of interest and fees at different rates on Extended Revolving Credit Commitments (and related outstandings) and (II) repayments required upon the Maturity Date of the non-extending Revolving Credit Commitments); *provided, further*, that (A) no Default shall have occurred and be continuing at the time a Revolver Extension Request is delivered to Lenders, (B) in no event shall the final maturity date of any Extended Revolving Credit Commitments of a given Revolver Extension Series at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Revolving Credit Commitments hereunder, (C) any such Extended Revolving Credit Commitments (and the Liens securing the same) shall be permitted by the terms of the Term Loan Intercreditor Agreement and (D) all documentation in respect of such Extension Amendment shall be consistent with the foregoing. Any Extended Revolving Credit Commitments amended pursuant to any Revolver Extension Request shall be designated a series (each, a “**Revolver Extension Series**”) of Extended Revolving Credit Commitments for all purposes of this Agreement; *provided that* any Extended Revolving Credit Commitments amended from an Existing Revolver Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Revolver Extension Series with respect to such Existing Revolver Tranche. Each Revolver Extension Series of Extended Revolving Credit Commitments incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$10,000,000.

(c) *Extension Request.* The Borrower shall provide the applicable Revolver Extension Request at least five (5) Business Days prior to the date on which Lenders under the Existing Revolver Tranche are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.16. No Lender shall have any obligation to agree to have any of its Revolving Credit Commitments amended into Extended Revolving Credit Commitments, as applicable, pursuant to any Revolver Extension Request. Any Revolving Credit Lender (each, an “**Extending Revolving Credit Lender**”) wishing to have all or a portion of its Revolving Credit Commitments under the Existing Revolver Tranche subject to such Revolver Extension Request amended into Extended Revolving Credit Commitments shall notify the Administrative Agent (each, an “**Extension Election**”) on or prior to the date specified in such Revolver Extension Request of the amount of its Revolving Credit Commitments under the Existing Revolver Tranche which it has elected to request be amended into Extended Revolving Credit Commitments, as applicable (subject to any minimum denomination requirements imposed by the Administrative Agent). In the event that the aggregate principal amount of Revolving Credit Commitments under the Existing Revolver Tranche in respect of which applicable Revolving Credit Lenders shall have accepted the relevant Revolver Extension Request exceeds the amount of Extended Revolving Credit Commitments requested to be extended pursuant to the Revolver Extension Request, Revolving Credit Commitments subject to Extension Elections shall be amended to Extended Revolving Credit Commitments on a pro rata basis (subject to rounding by the Administrative Agent, which shall be conclusive) based on the aggregate principal amount of Revolving Credit Commitments included in each such Extension Election.

(d) *Extension Amendment.* Extended Revolving Credit Commitments shall be established pursuant to an amendment (each, a “**Extension Amendment**”) to this Agreement among the Borrower, the Administrative Agent and each Extending Revolving Credit Lender providing an Extended Revolving Credit Commitment thereunder, which shall be consistent with the provisions set forth in Section 2.16(b) above (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in

Section 4.02 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) legal opinions, board resolutions and officers' certificates consistent with those delivered on the Closing Date other than changes to such legal opinion resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that the Extended Revolving Credit Commitments are provided with the benefit of the applicable Loan Documents. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Revolving Credit Commitments incurred pursuant thereto, (ii) make such other changes to this Agreement and the other Loan Documents consistent with the provisions and intent of the second paragraph of Section 10.01 (without the consent of the Required Lenders called for therein) and (iii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.16, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment.

(e) No conversion of Loans pursuant to any Extension in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

Section 2.17 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, if so determined by the Administrative Agent or requested by the L/C Issuer or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; *fourth*, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or Swing Line Lender against that

Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(h).

(iv) Reallocation of Pro Rata Share to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Loans pursuant to Sections 2.03 and 2.04, the "Pro Rata Share" of each Non-Defaulting Lender's Revolving Credit Loans and L/C Obligations shall be computed without giving effect to the Commitment of that Defaulting Lender; *provided* that (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default has occurred and is continuing; and (ii) the aggregate obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Commitment of that Non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Loans of that Lender.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, Swing Line Lender and the L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Pro Rata Share (without giving effect to Section 2.17(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.18 Protective Advances.

(a) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrower and the Lenders, from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation to), to make Loans to the Borrower, on behalf of all Lenders, which the Administrative Agent, in its reasonable discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations or (iii) to pay any other amount chargeable to or required to be paid by the Loan Parties pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 10.04) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "**Protective Advances**"); *provided* that, the aggregate amount of Protective Advances outstanding at any time shall not at any time exceed the lesser of (x) \$2,500,000 and (y) 5.0% of the Aggregate Commitments; *provided further* that the aggregate amount of outstanding Protective Advances plus the aggregate amount of the other Total Outstandings shall not exceed the Aggregate Commitments. Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances shall be secured by the Collateral Documents and shall constitute Obligations hereunder and under the other Loan Documents. All Protective Advances shall be Base Rate Loans. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. Notwithstanding anything to the contrary set forth in Section 2.02, at any time that there is sufficient Excess Availability and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Lenders to make a Revolving Credit Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.18(b).

(b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent without recourse or warranty an undivided interest and participation in such Protective Advance in proportion to its Pro Rata Share. On any Business Day, the Administrative Agent may, in its sole discretion, give notice to the Lenders that the Lenders are required to fund their risk participations in Protective Advances (and, if any Protective Advance is outstanding on the thirtieth calendar day following the date of Borrowing of such Protective Advance, then on the first Business Day following such thirtieth calendar day, the Administrative Agent shall give such notice) in which case each Lender shall fund its participation on the date specified in such notice. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

ARTICLE III.
TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower (the term Borrower under Article III being deemed to include any Subsidiary for whose account a Letter of Credit is issued) or any Guarantor under any Loan Document shall be made free and clear of and without deduction for any Taxes. If the Borrower, any Guarantor or other applicable

withholding agent shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) if the Tax in question is an Indemnified Tax or Other Tax, the sum payable by the Borrower or applicable Guarantor shall be increased as necessary so that after all required deductions have been made (including deductions applicable to additional sums payable under this Section 3.01), each of such Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding agent shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if the Borrower or any Guarantor is the applicable withholding agent, it shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary Taxes and any other excise, property, intangible or mortgage recording Taxes, imposed by any Governmental Authority, which arise from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document excluding, in each case, any such Tax imposed as a result of an Agent or Lender's Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments under any Loan Document (collectively, "**Assignment Taxes**") (except for Assignment Taxes resulting from an assignment, participation, etc., that is requested or required in writing by Borrower), but only to the extent such Assignment Taxes are imposed as a result of a connection between the assignor, assignee, participating lender or Participant (as applicable) and the jurisdiction imposing such Assignment Taxes (other than any connection arising solely from executing, delivering, being a party to, engaging in any transaction pursuant to, performing obligations under, receiving payments under, and/or enforcing, any Loan Document) (all such non-excluded Taxes described in this Section 3.01(b) being hereinafter referred to as "**Other Taxes**").

(c) Without duplication of any amounts paid or to be paid pursuant to Section 3.01(a), the Borrower and each Guarantor agree to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes imposed on or with respect to any amounts paid by or on account of the Borrower or any Guarantor under any Loan Document and Other Taxes payable by such Agent or such Lender and (ii) any expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by such Agent or Lender (or by an Agent on behalf of such Lender), accompanied by a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts shall be conclusive absent manifest error.

(d) Each Lender and Agent shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender and Agent shall, whenever a lapse in time or change in circumstances renders such documentation obsolete, invalid or inaccurate in any material respect, deliver promptly and on or before the date such documentation expires, becomes obsolete, invalid or inaccurate to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or

the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its inability to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding Tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding any other provision of this clause (d), a Lender shall not be required to deliver any documentation pursuant to this clause (d) that such Lender is not legally eligible to deliver. Without limiting the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from federal backup withholding.

(ii) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (A) a certificate substantially in the form of Exhibit I hereto (any such certificate a “**United States Tax Compliance Certificate**”) and (B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN (or any successor forms), or

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Lender that has transferred its beneficial interest to a Participant or SPC), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (*provided* that, if the Lender is a partnership and not a participating Lender (or Lender transferring to an SPC) and one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owner(s)).

(iii) Each Agent that is a United States person (as defined in Section 7701(a)(30)) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of Internal Revenue Service Form W-9 with respect to fees received

on its own behalf, certifying that such Agent is exempt from U.S. federal backup withholding. Each Agent that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI with respect to fees received on its own behalf.

(e) If a payment made to any Person under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Person were to fail to comply with the applicable reporting requirements of FATCA, such Person shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Laws and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Laws and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Person has or has not complied with such Person's obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment.

(f) Any Lender or Agent claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to mitigate or reduce the additional amounts payable, which reasonable efforts may include a change in the jurisdiction of its Lending Office (or any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise disadvantageous to such Lender.

(g) If any Lender or Agent determines, in its sole discretion, that it has received a refund in respect of any Indemnified Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by a Loan Party pursuant to this Section 3.01, it shall promptly remit such refund to such Loan Party (but only to the extent of indemnification or additional amounts paid by the Loan Party under this Section 3.01 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of the Lender or Agent, as the case may be, and without interest (other than any interest paid by the relevant taxing authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); *provided* that the Loan Parties, upon the request of the Lender or Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant taxing authority) to such party in the event such party is required to repay such refund to the relevant taxing authority. This Section shall not be construed to require any Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other person.

(h) For the avoidance of doubt, a "Lender" shall, for all purposes of this Section 3.01, include any L/C Issuer and any Swing Line Lender.

Section 3.02 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to

Eurocurrency Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurocurrency Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.05. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.03 Inability to Determine Rates.

If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the applicable Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan, or that the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, or that Dollar deposits are not being offered to banks in the London interbank eurodollar, or other applicable, market for the applicable amount and the Interest Period of such Eurocurrency Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of such Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request, if applicable, into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy; Eurocurrency Rate Loan Reserves.

(a) If any Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the Closing Date, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Eurocurrency Rate Loans or (as the case may be) issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from (i)(x) any Indemnified Taxes or Other Taxes indemnified pursuant to Section 3.01, (y) any Taxes excluded from the definition of Indemnified Taxes (other than Taxes excluded under clause (ii) thereof) or Other Taxes or (z) any Taxes that are not imposed on or in respect of its loans, loan principal, interest or other payments, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or (ii) reserve requirements contemplated by Section 3.04(c)) and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining the Eurocurrency Rate Loan (or of maintaining its obligations to make any Loan), or to reduce the amount of any sum received or receivable by such Lender, then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost

or reduction. Notwithstanding anything herein to the contrary, for all purposes under this Agreement (including Section 3.04(b)), (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in Law, regardless of the date enacted, adopted or issued.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof, in each case after the Closing Date, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction within fifteen (15) days after receipt of such demand.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each applicable Eurocurrency Rate Loan of the Borrower equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurocurrency Rate Loans of the Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation.

(e) If any Lender requests compensation under this Section 3.04, then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another Lending Office for any Loan or Letter of Credit affected by such event; *provided* that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage, and *provided, further*, that nothing in this Section 3.04(e) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.04(a), (b), (c) or (d).

Section 3.05 Funding Losses.

Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurocurrency Rate Loan of the Borrower on a day other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurocurrency Rate Loan of the Borrower on the date or in the amount notified by the Borrower;

including any loss or expense (excluding loss of anticipated profits) arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

Section 3.06 Matters Applicable to All Requests for Compensation.

(a) Any Agent or any Lender claiming compensation under this Article III shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.01, 3.02, 3.03 or 3.04, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another applicable Eurocurrency Rate Loan, or, if applicable, to convert Base Rate Loans into Eurocurrency Rate Loan, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(c) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue any Eurocurrency Rate Loan, or to convert Base Rate Loans into Eurocurrency Rate Loans shall be suspended pursuant to Section 3.06(b) hereof, such Lender's applicable Eurocurrency Rate Loans shall be automatically converted into Base Rate Loans (or, if such conversion is not possible, repaid) on the last day(s) of the then current Interest Period(s) for such Eurocurrency Rate Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurocurrency Rate Loans have been so

converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurocurrency Rate Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurocurrency Rate Loans shall be made or continued instead as Base Rate Loans (if possible), and all Base Rate Loans of such Lender that would otherwise be converted into Eurocurrency Rate Loans shall remain as Base Rate Loans.

(d) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of any of such Lender's Eurocurrency Rate Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurocurrency Rate Loans made by other Lenders under the applicable Facility are outstanding, if applicable, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurocurrency Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurocurrency Rate Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

Section 3.07 Replacement of Lenders under Certain Circumstances.

(a) If at any time (i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 or 3.04 as a result of any condition described in such Sections or any Lender ceases to make any Eurocurrency Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (ii) any Lender becomes a Defaulting Lender or (iii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on ten (10) Business Days' prior written notice to the Administrative Agent and such Lender, (x) replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.07(b) (with the assignment fee to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement (in respect of any applicable Facility only in the case of clause (i) or, with respect to a Class vote, clause (iii)) to one or more Eligible Assignees; *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; and *provided, further*, that (A) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments and (B) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of, the applicable departure, waiver or amendment of the Loan Documents; or (y) terminate the Commitment of such Lender or L/C Issuer, as the case may be, and (1) in the case of a Lender (other than an L/C Issuer), repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date and (2) in the case of an L/C Issuer, repay all Obligations of the Borrower owing to such L/C Issuer relating to the Loans and participations held by the L/C Issuer as of such termination date and cancel or backstop on terms satisfactory to such L/C Issuer any Letters of Credit issued by it; *provided* that in the case of any such termination of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable departure, waiver or amendment of the Loan Documents and such termination shall be in respect of any applicable facility only in the case of clause (i) or, with respect to a Class vote, clause (iii).

(b) Any Lender being replaced pursuant to Section 3.07(a) above shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's applicable Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans in respect thereof, and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent. Pursuant to such Assignment and Assumption, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans, (B) all obligations of the Borrower owing to the assigning Lender relating to the Loans, Commitments and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Assumption and (C) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Note or Notes executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. In connection with any such replacement, if any such Non-Consenting Lender or Defaulting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption to such Non-Consenting Lender or Defaulting Lender, then such Non-Consenting Lender or Defaulting Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Non-Consenting Lender or Defaulting Lender.

(c) Notwithstanding anything to the contrary contained above, any Lender that acts as an L/C Issuer may not be replaced hereunder at any time that it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such L/C Issuer (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer reasonably satisfactory to such L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to each such outstanding Letter of Credit and the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.06.

(d) In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each affected Lender or each Lender of a Class in accordance with the terms of Section 10.01 or all the Lenders with respect to a certain Class of the Loans and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all affected Lenders of a certain Class, the Required Class Lenders) have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**Non-Consenting Lender.**"

Section 3.08 Survival.

All of the Loan Parties' obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01 Conditions to Initial Credit Extension.

The obligation of each Lender to make a Credit Extension hereunder on the Closing Date is subject to satisfaction of the following conditions precedent, except as otherwise agreed between the Borrower and the Administrative Agent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or pdf copies or other facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party each in form and substance reasonably satisfactory to the Administrative Agent and its legal counsel:

(i) [reserved];

(ii) executed counterparts of this Agreement;

(iii) a Note executed by the Borrower in favor of each Lender that has requested a Note at least two (2) Business Days in advance of the Closing Date;

(iv) each Collateral Document set forth in Section 1.01C of the Confidential Disclosure Letter required to be executed on the Closing Date as indicated on such schedule, duly executed by each Loan Party thereto, together with:

(A) except to the extent delivered to the Term Agent pursuant to the Term Loan Credit Agreement Documentation and the Term Loan Intercreditor Agreement, certificates, if any, representing the Pledged Equity referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank; and

(B) evidence that all other actions, recordings and filings required by the Collateral Documents that the Administrative Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been taken, completed or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent;

(v) such certificates of good standing (to the extent such concept exists) from the applicable secretary of state of the state of organization of each Loan Party, certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(vi) an opinion from Kirkland & Ellis LLP, New York counsel to the Loan Parties, substantially in the form of Exhibit N;

(vii) a solvency certificate from the chief financial officer, chief accounting officer or other officer with equivalent duties of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit D-2;

(viii) certified copies of the Acquisition Agreement and schedules thereto, duly executed by the parties thereto, together with all material agreements, instruments and other documents delivered in connection therewith as the Administrative Agent shall reasonably request, each including certification by a Responsible Officer of the Borrower that such documents are in full force and effect as of the Closing Date and that the condition specified in clause (c) below has been satisfied;

(ix) copies of a recent Lien and judgment search in each jurisdiction reasonably requested by the Administrative Agent with respect to the Loan Parties; and

(x) a Borrowing Base Certificate which calculates the Borrowing Base as of a date preceding the Closing Date that is specified by the Administrative Agent.

provided, however, that, each of the requirements set forth in clause (iv) above, including the delivery of documents and instruments necessary to satisfy the Collateral and Guarantee Requirement (except for the execution and delivery of the Security Agreement and to the extent that a Lien on such Collateral may be perfected (x) by the filing of a financing statement under the Uniform Commercial Code or (y) by the delivery of stock certificates of the Borrower and its wholly owned Material Domestic Subsidiaries other than any Unrestricted Subsidiaries) shall not constitute conditions precedent to any Credit Extension on the Closing Date after the Borrower's use of commercially reasonable efforts to provide such items on or prior to the Closing Date or without undue burden or expense if the Borrower agrees to deliver, or cause to be delivered, such search results, documents and instruments, or take or cause to be taken such other actions as may be required to perfect such security interests within ninety (90) days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion).

(b) All fees and expenses required to be paid hereunder and invoiced at least three (3) Business Days before the Closing Date (except as otherwise reasonably agreed to by the Borrower) shall have been paid from the proceeds of the initial fundings under the Facilities, including fees pursuant to the Fee Letter.

(c) Prior to or substantially simultaneously with the initial Borrowing on the Closing Date, (i) the Acquisition shall have been consummated in all material respects in accordance with the terms of the Acquisition Agreement as in effect on December 20, 2011 (without giving effect to any amendments, consents or waivers by Holdings that are material and adverse to the Lenders or the Arrangers (as reasonably determined by the Arrangers) without the prior consent of the Arrangers (such consent not to be unreasonably withheld, delayed or conditioned) (it being understood that (a) any reduction in the purchase price of, or consideration for, the Acquisition is not material and adverse to the interests of the Lenders or the Arrangers, but shall reduce the commitments in respect of the loans under the Term Loan Credit Agreement and the unsecured

bridge loans (if any) (or Senior Notes) to be incurred or issued on the Closing Date, ratably and (b) any amendment to the definition of “Material Adverse Change” or “Material Adverse Effect” in such Acquisition Agreement is material and adverse to the interests of the Lenders and the Arrangers) and (ii) the Refinancing shall have been consummated.

(d) No Material Adverse Change (as defined in the Acquisition Agreement as in effect on December 20, 2011) shall have occurred which is not capable of remedy prior to the Closing Date.

(e) The Specified Representations shall be true and correct in all material respects (or, if qualified by “materiality,” “Material Adverse Effect” or similar language, in all respects (after giving effect to such qualification)) on and as of the Closing Date; *provided* that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date.

(f) The Arrangers shall have received the Company Annual Financial Statements, the Company Quarterly Financial Statements, the Acquired Business Annual Financial Statements and the Acquired Business Unaudited Financial Statements.

(g) The Arrangers shall have received the Pro Forma Financial Statements.

(h) The Administrative Agent and each Arranger shall have received all documentation and other information about the Borrower and the Guarantors as has been reasonably requested in writing at least 15 days prior to the Closing Date by the Administrative Agent or such Arranger that it reasonably determines is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA Patriot Act.

(i) The representations and warranties made by the Seller in the Acquisition Agreement that are material to the interests of the Lenders shall be true and correct, but only to the extent that Holdings or the Borrower has the right to terminate its obligations under the Acquisition Agreement as a result of a breach of such representations and warranties.

Without limiting the generality of the provisions of Section 9.03(b), for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02 Conditions to All Credit Extensions after the Closing Date.

The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(i) The representations and warranties of each Loan Party set forth in Article V and

in each other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided*, that, any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(ii) No Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(iii) The Administrative Agent and, if applicable, the relevant L/C Issuer or the relevant Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(iv) After giving effect to any requested Credit Extension, the aggregate outstanding amount of all Total Outstandings does not exceed the Line Cap at such time.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(i), (ii) and (iv) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V. **REPRESENTATIONS AND WARRANTIES**

Holdings, the Borrower and each of the Subsidiary Guarantors party hereto represent and warrant to the Agents and the Lenders at the time of each Credit Extension (to the extent required to be true and correct for such Credit Extension (other than any Protective Advance) pursuant to Article IV) that:

Section 5.01 Existence, Qualification and Power; Compliance with Laws.

Each Loan Party and each Restricted Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization to the extent such concept exists in such jurisdiction, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business as currently conducted and (ii) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs and injunctions and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case, referred to in clause (a) (other than with respect to the Borrower), (b)(i) (other than with respect to the Borrower), (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.

Section 5.03 Governmental Authorization; Other Consents.

No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

Section 5.04 Binding Effect.

This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by (i) Debtor Relief Laws and by general principles of equity and (ii) the need for filings and registrations necessary to create or perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (iii) the effect of foreign Laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

Section 5.05 Financial Statements; No Material Adverse Effect.

(a) The Company Annual Financial Statements and the Company Quarterly Financial Statements fairly present in all material respects the financial condition of Holdings and its Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, (A) except as otherwise expressly

noted therein and (B) subject, in the case of the Company Quarterly Financial Statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(b) The Acquired Business Annual Financial Statements and the Acquired Business Unaudited Financial Statements fairly present in all material respects the financial condition of the Acquired Business as of the dates thereof and its results of operations for the period covered thereby in accordance with IFRS consistently applied throughout the periods covered thereby, (A) except as otherwise expressly noted therein and (B) subject, in the case of the Acquired Business Unaudited Financial Statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(c) The unaudited *pro forma* consolidated balance sheet of Holdings and its Subsidiaries as of the last day of the twelve-month period ending on the last day of the most recently completed four-fiscal quarter period ended at least forty-five (45) days (or ninety (90) days if such four-fiscal quarter period is the end of Holdings' fiscal year) prior to the Closing Date, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (including the notes thereto) (the "**Pro Forma Balance Sheet**") and the unaudited *pro forma* consolidated statement of income of Holdings and its Subsidiaries for the 12-month period ended at least forty-five (45) days (or ninety (90) days if such four-fiscal quarter period is the end of the Borrower's fiscal year) prior to the Closing Date, prepared after giving effect to the Transactions as if the Transactions had occurred at the beginning of such period (together with the Pro Forma Balance Sheet, the "**Pro Forma Financial Statements**"), copies of which have heretofore been furnished to the Administrative Agent, have been prepared based on the Company Annual Financial Statements, the Company Quarterly Financial Statements, the Acquired Business Annual Financial Statements and the Acquired Business Unaudited Financial Statements and have been prepared in good faith, based on assumptions believed by Holdings to be reasonable as of the date of delivery thereof, and present fairly in all material respects on a *pro forma* basis the estimated financial position of Holdings and its Subsidiaries as at September 30, 2011 and their estimated results of operations for the period covered thereby.

(d) The forecasts of consolidated balance sheets, income statements and cash flow statements of Holdings and its Subsidiaries for each fiscal year ending after the Closing Date until the fifth anniversary of the Closing Date, copies of which have been furnished to the Administrative Agent prior to the Closing Date, and all Projections delivered pursuant to Section 6.01 have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made, it being understood that projections as to future events are not to be viewed as facts and actual results may vary materially from such forecasts.

(e) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(f) There are no material liabilities that are not disclosed in the Company Annual Financial Statements, the Company Quarterly Financial Statements, the Acquired Business Annual Financial Statements, the Acquired Business Unaudited Financial Statements or any other financial statements delivered pursuant to Section 6.01(a) or (b).

Section 5.06 Litigation.

Except as set forth in Section 5.06 of the Confidential Disclosure Letter, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of Holdings or the Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings, the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.07 Ownership of Property; Liens.

Holdings, the Borrower and each of its Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all Real Property necessary in the ordinary conduct of its business, free and clear of all Liens except as set forth in Section 5.07 of the Confidential Disclosure Letter and except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.08 Environmental Matters.

Except as specifically disclosed in Section 5.08(a) of the Confidential Disclosure Letter or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

- (a) Each Loan Party and its respective properties and operations are and have been in material compliance with all Environmental Laws, which includes obtaining and maintaining all applicable Environmental Permits required under such Environmental Laws to carry on the business of the Loan Parties;
- (b) the Loan Parties have not received any written notice that alleges any of them is in violation of or potentially liable under any Environmental Laws and none of the Loan Parties nor any of the Real Property is the subject of any claims, investigations, liens, demands, or judicial, administrative or arbitral proceedings pending or, to the knowledge of the Borrower, threatened in writing, under any Environmental Law or to revoke or modify any Environmental Permit held by any of the Loan Parties;
- (c) there has been no Release of Hazardous Materials on, at, under or from any Real Property or facilities owned, operated or leased by any of the Loan Parties, or, to the knowledge of the Borrower, Real Property formerly owned, operated or leased by any Loan Party or arising out of the conduct of the Loan Parties that could reasonably be expected to require investigation, remedial activity or corrective action or cleanup or could reasonably be expected to result in the Borrower incurring liability under Environmental Laws; and
- (d) there are no facts, circumstances or conditions arising out of or relating to the operations of the Loan Parties or Real Property or facilities owned, operated or leased by any of the Loan Parties or the knowledge of the Borrower, Real Property or facilities formerly owned, operated or leased by the Loan Parties that could reasonably be expected to result in the Borrower incurring liability under Environmental Laws.

Section 5.09 Taxes.

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Loan Parties and their Subsidiaries have timely filed all Tax returns required to be filed, and have paid all Taxes levied or imposed upon them or their properties, income, profits or assets, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Parties against the Loan Parties that, if made would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 5.10 ERISA Compliance.

(a) Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws.

(b) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither any Loan Party, Restricted Subsidiary nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due under Section 4007 of ERISA); (iii) neither any Loan Party, Restricted Subsidiary nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (iv) neither any Loan Party, Restricted Subsidiary nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA; except, with respect to each of the foregoing clauses of this Section 5.10(b), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.11 Subsidiaries; Equity Interests.

As of the Closing Date (after giving effect to the Transactions), no Loan Party has any material Subsidiaries other than those specifically disclosed in Section 5.11 of the Confidential Disclosure Letter, and all of the outstanding Equity Interests owned by the Loan Parties (or a Subsidiary of any Loan Party) in such material Subsidiaries have been validly issued and are fully paid and all Equity Interests owned by a Loan Party (or a Subsidiary of any Loan Party) in such material Subsidiaries are owned free and clear of all Liens except (i) those created under the Collateral Documents or under the Term Loan Credit Agreement Documentation (which Liens shall be subject to the Term Loan Intercreditor Agreement) and (ii) any Lien that is permitted under Section 7.01. As of the Closing Date, Schedules 1(a) and 5(a) to the Perfection Certificate (a) set forth the name and jurisdiction of each Domestic Subsidiary that is a Loan Party, (b) set forth the ownership interest of the Borrower and any other Subsidiary thereof in each Subsidiary, including the percentage of such ownership and (c) identifies each Subsidiary that is a Subsidiary the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral and Guarantee Requirement.

Section 5.12 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of

purchasing or carrying Margin Stock, and no proceeds of any Borrowings or drawings under any Letter of Credit will be used for any purpose that violates Regulation U of the Board of Governors of the United States Federal Reserve System.

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

Section 5.13 Disclosure.

No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, *pro forma* financial information and information of a general economic or industry nature) to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading. With respect to projected financial information and *pro forma* financial information, Holdings and the Borrower represent that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

Section 5.14 Labor Matters.

Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of the Borrower or any of its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with such matters; and (c) all payments due from each of the Loan Parties or any of the Restricted Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party.

Section 5.15 Intellectual Property; Licenses, Etc.

Each of the Loan Parties and the Restricted Subsidiaries own, license or possess the right to use all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, technology, software, know-how database rights, design rights and other intellectual property rights (collectively, “**IP Rights**”) that are reasonably necessary for the operation of their respective businesses as currently conducted, and, such IP Rights do not conflict with the rights of any Person, except to the extent the absence of such IP Rights and such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the knowledge of Holdings and the Borrower, no IP Rights used by any Loan Party or any of the Restricted Subsidiaries in the operation of their respective businesses as currently conducted infringes upon any rights held by any Person, except for such infringements, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the IP Rights owned by any Loan Party or any of the Restricted Subsidiaries, is pending or, to the knowledge of Holdings and the Borrower, threatened against any Loan Party or any of the Restricted Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

All registrations listed in Schedule 12(a) or 12(b) to the Perfection Certificate are valid and in full force and effect, except, in each case, to the extent the failure of such registrations to be valid and in full force and effect could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.16 Solvency.

On the Closing Date, after giving effect to the Transactions, the Borrower and its Restricted Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 Subordination of Junior Financing.

The Obligations are “Senior Debt,” “Senior Indebtedness,” “Guarantor Senior Debt” or “Senior Secured Financing” (or any comparable term) under, and as defined in, any Junior Financing Documentation that is subordinated in right of payment to the Obligations.

Section 5.18 USA Patriot Act.

(a) To the extent applicable, each of Holdings and its Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the USA Patriot Act.

(b) No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 5.19 Security Documents.

Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to Administrative Agent of any Pledged Debt and any Pledged Equity required to be delivered pursuant to the applicable Collateral Documents), are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties, except as otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a legal, valid, enforceable and perfected first priority (other than with respect to the Fixed Asset Priority Collateral (as to which the Lien hereon shall be junior to the extent set forth in the Term Loan Intercreditor Agreement)) Lien on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.19) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest (other than with respect to those pledges and security interests made under the Laws of the jurisdiction of formation of the applicable Foreign Subsidiary) in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-

perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Closing Date and until required pursuant to Section 6.13 or 4.01(a)(iv), the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.01(a)(iv).

ARTICLE VI.
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than obligations under ABL Secured Treasury Services Agreements or obligations under ABL Secured Hedge Agreements) hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or a backstop letter of credit reasonably satisfactory to the applicable L/C Issuer is in place), then from and after the Closing Date, Holdings and the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of the Restricted Subsidiaries to:

Section 6.01 Financial Statements.

(a) Deliver to the Administrative Agent for prompt further distribution to each Lender, not later than the earlier of (x) ninety (90) days after the end of each fiscal year of the Borrower (beginning with the fiscal year ending March 31, 2012) and (y) the day on which Holdings' Annual Report on Form 10-K is required to be filed with the SEC for such fiscal year, a consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of PricewaterhouseCoopers LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) Deliver to the Administrative Agent for prompt further distribution to each Lender, not later than the earlier of (x) forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (beginning with the fiscal quarter ended December 31, 2011) and (y) the day on which Holdings' Quarterly Report on Form 10-Q is required to be filed with the SEC for the applicable fiscal quarter, a consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal quarter and the related (i) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (ii) consolidated statements of cash flows for such fiscal quarter and the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of Borrower as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) Deliver to the Administrative Agent for prompt further distribution to each Lender, within ninety (90) days after the end of each fiscal year of Borrower, a detailed consolidated budget for the following fiscal year on a quarterly basis (including a projected consolidated balance sheet of Borrower and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flow and projected income and a summary of the material underlying assumptions applicable thereto) (collectively, the “**Projections**”), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood that actual results may vary from such Projections and that such variations may be material; and

(d) Deliver to the Administrative Agent with each set of consolidated financial statements referred to in Sections 6.01(a) and 6.01(b) above, the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (A) the applicable financial statements of the Borrower (or any direct or indirect parent of the Borrower) or (B) the Borrower’s (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to clauses (A) and (B), (i) to the extent such information relates to a parent of the Borrower, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Borrower (or such parent), on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a standalone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are accompanied by a report and opinion of PricewaterhouseCoopers LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit.

Any financial statement required to be delivered pursuant to Section 6.01(a) or (b) shall not be required to include purchase accounting adjustments relating to the Transactions to the extent it is not practicable to include them.

Documents required to be delivered pursuant to Section 6.01 and Section 6.02(b) and (c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower (or any direct or indirect parent of the Borrower) posts such documents, or provides a link thereto on the website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower’s behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (x) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (y) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide

paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent (which may be electronic copies delivered via electronic mail). Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.08); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and the Arranger shall treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

Section 6.02 Certificates; Other Information.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) days after the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of Holdings;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which Holdings, the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(c) promptly after the furnishing thereof, copies of any material notices received by any Loan Party (other than in the ordinary course of business) or material statements or material

reports furnished to any holder of debt securities (other than in connection with any board observer rights) of any Loan Party or of any of its Restricted Subsidiaries pursuant to the terms of the Term Loan Credit Agreement Documentation, the Senior Notes Indenture or the Existing Notes Indenture and, in each case, any Permitted Refinancing thereof in each case in a principal amount in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to any other clause of this Section 6.02;

(d) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i) in the case of annual Compliance Certificates only, a report setting forth the information required by sections describing the legal name and the jurisdiction of formation of each Loan Party and the location of the chief executive office of each Loan Party of the Perfection Certificate or confirming that there has been no change in such information since the Closing Date or the date of the last such report, (ii) a description of each event, condition or circumstance during the last fiscal quarter covered by such Compliance Certificate requiring a mandatory prepayment under Section 2.05(b) and (iii) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate (to the extent that there have been any changes in the identity or status as a Restricted Subsidiary or Unrestricted Subsidiary of any such Subsidiaries since the Closing Date or the most recent list provided);

(e) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Restricted Subsidiaries, or compliance with the terms of the Loan Documents, and any supporting and additional information related to the Borrowing Base substantially consistent with the due diligence information provided by the Borrower prior to the Closing Date, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request; and

(f) as soon as available, but in any event within twenty (20) days of the end of each calendar month (or, within five (5) Business Days of the end of each calendar week during any Weekly Reporting Period), a Borrowing Base Certificate, which calculates the Borrowing Base as of the last day of the immediately preceding month (and, if a Weekly Reporting Period is in effect, as of the last day of the immediately preceding week). Upon the Disposition of Collateral of any Loan Party included in the Borrowing Base, if the Net Proceeds thereof are, or are expected to be, in excess of \$5,000,000, the Borrower shall also furnish an updated Borrowing Base Certificate promptly upon the Disposition of such Collateral.

Section 6.03 Notices.

Promptly after a Responsible Officer of the Borrower or any Subsidiary Guarantor has obtained knowledge thereof, notify the Administrative Agent:

- (a) of the occurrence of any Default;
- (b) of the occurrence of an ERISA Event which could reasonably be expected to result in a Material Adverse Effect;
- (c) of the filing or commencement of, or any threat or notice of intention of any

person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority against the Borrower or any of its Restricted Subsidiaries that could reasonably be expected to result in a Material Adverse Effect; and

(d) any and all default notices received under or with respect to any leased location or public warehouse where ABL Priority Collateral with a cost in excess of \$5,000,000 is located (which shall be delivered within two Business Days after receipt thereof).

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b), (c) or (d) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Taxes.

Pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP or (b) the failure to pay or discharge the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization, and

(b) take all reasonable action to maintain all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises necessary or desirable in the normal conduct of its business,

except, in the case of (a) (other than with respect to Holdings and the Borrower) or (b), to the extent (i) that failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) pursuant to any merger, consolidation, liquidation, dissolution or Disposition permitted by Article VII.

Section 6.06 Maintenance of Properties.

Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted.

Section 6.07 Maintenance of Insurance.

Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed,

insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as Holdings, the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons. Each such policy of insurance shall as appropriate (i) name the Administrative Agent, on behalf of the Lenders, as an additional insured thereunder as its interest may appear or (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement that names the Administrative Agent, on behalf of the Lenders, as loss payee thereunder. If the improvements on any Mortgaged Property are at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then, to the extent required by applicable Flood Insurance Laws, the Borrower shall, or shall cause each Loan Party to, (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount reasonably satisfactory to the Administrative Agent and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

Section 6.08 Compliance with Laws.

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.09 Books and Records.

Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP and which reflect all material financial transactions and matters involving the assets and business of Holdings, the Borrower or a Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year and only one (1) such time shall be at the Borrower's expense; *provided, further*, that during the continuation of an Event of Default,

the Administrative Agent (or any of its respective representatives or independent contractors), on behalf of the Lenders, may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 6.10, none of the Borrower or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.11 Additional Collateral; Additional Guarantors.

At the Borrower's expense, subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon the formation or acquisition of any new direct or indirect wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by any Loan Party or the designation in accordance with Section 6.14 of any existing direct or indirect wholly owned Material Domestic Subsidiary as a Restricted Subsidiary (in each case, other than an Excluded Subsidiary) or any Subsidiary becoming a wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary):

(i) within 60 days after such formation, acquisition or designation, or such longer period as the Administrative Agent may agree in writing in its discretion:

(A) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Administrative Agent (or, in the case of the Intercompany Note prior to the Discharge of Fixed Asset Obligations, the Fixed Asset Administrative Agent), other than with respect to any Excluded Assets, joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, a counterpart of the Intercompany Note and other security agreements and documents as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent (consistent with the Mortgages, Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Closing Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(B) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement (and the parent of each such Domestic Subsidiary that is a Guarantor) to deliver any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged

pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) take and cause such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement and each direct or indirect parent of such Material Domestic Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC financing statements and delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and perfected Liens to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) if reasonably requested by the Administrative Agent, within forty-five (45) days after such request (or such longer period as the Administrative Agent may agree in writing in its discretion), deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties to the Administrative Agent as to such matters set forth in this Section 6.11(a) as the Administrative Agent may reasonably request;

(iii) as promptly as practicable after the request therefor by the Administrative Agent, deliver to the Administrative Agent with respect to each Material Real Property, any existing title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided, however*, that there shall be no obligation to deliver to the Administrative Agent any existing environmental assessment report whose disclosure to the Administrative Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained; and

(iv) if reasonably requested by the Administrative Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in writing in its discretion), deliver to the Administrative Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to perfection and existence of security interests with respect to property of any Guarantor acquired after the Closing Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (b) below.

(b) Not later than one hundred twenty (120) days after the acquisition by any Loan Party of Material Real Property as determined by the Borrower (acting reasonably and in good faith) (or such longer period as the Administrative Agent may agree in writing in its discretion) that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement, which property would not be automatically subject to another Lien pursuant to pre-existing Collateral Documents, cause such property to be subject to a Lien and Mortgage in favor of the Administrative Agent for the benefit of the Secured Parties and take, or cause the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the

Administrative Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of, the Collateral and Guarantee Requirement and to otherwise comply with the requirements of the definition of "Collateral and Guarantee Requirement".

Section 6.12 Compliance with Environmental Laws.

Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent the Loan Parties are required by Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 6.13 Further Assurances.

Promptly upon reasonable request by the Administrative Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents, to the extent required pursuant to the Collateral and Guarantee Requirement. If the Administrative Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of any Mortgaged Property, the Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA. The Borrower shall promptly notify the Administrative Agent upon the purchase of the Split Brands or the termination of Holdings' obligation to purchase the Split Brands. To the extent that the Split Brands are purchased prior to the Split Brands Cutoff Date: (i) either (x) such purchase must be made by the Borrower or a Subsidiary Guarantor, or (y) upon the purchase of the Split Brands by Holdings, Holdings shall contribute the Split Brands to the Borrower or a Subsidiary Guarantor and (ii) the Borrower shall take all such actions required by Section 6.11 to create and perfect the security interest in the Split Brands and comply with the Collateral and Guarantee Requirement. Holdings shall take all actions necessary to consummate the BSPA Assignment.

Section 6.14 Designation of Subsidiaries.

The Borrower may at any time after the Closing Date designate any Restricted Subsidiary of the Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, the Payment Condition shall be satisfied, (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if, after such designation, it would be a "Restricted Subsidiary" for the purpose of the Term Loan Credit Agreement, the Senior Notes, Existing Notes or any Junior Financing and (iv) no Restricted Subsidiary may be designated an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary. The designation of any Subsidiary as an Unrestricted Subsidiary after the Closing Date shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value as determined in

good faith by the Borrower of the Borrower's or its Subsidiary's (as applicable) Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value as determined in good faith by the Borrower at the date of such designation of the Borrower's or its Subsidiary's (as applicable) Investment in such Subsidiary.

Section 6.15 Maintenance of Ratings.

Use commercially reasonable efforts to maintain (i) a public corporate credit rating (but not any specific rating) from S&P and a public corporate family rating (but not any specific rating) from Moody's, in each case in respect of the Borrower, and (ii) a public rating (but not any specific rating) in respect of the Revolving Credit Facility from each of S&P and Moody's.

Section 6.16 Physical Inventories.

The Loan Parties, at their own expense, shall conduct a physical inventory to be undertaken in each twelve (12) month period (or alternatively, periodic cycle counts) consistent with historical practices (and on a more frequent basis if requested by the Administrative Agent when an Event of Default exists), conducted following such methodology as is consistent with the methodology used in the immediately preceding inventory (or cycle count) or as otherwise may be reasonably satisfactory to the Administrative Agent. Following the completion of such inventory, the Borrower and the Subsidiary Guarantors shall promptly post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

Section 6.17 Appraisals.

If requested by the Administrative Agent, at the expense of the Borrower, once per fiscal year of the Borrower at any time as determined by the Administrative Agent, the Borrower will permit the Administrative Agent or professionals (including consultants, accountants, lawyers and appraisers) retained by the Administrative Agent, and, unless an Event of Default then exists and is continuing, on reasonable prior notice and during normal business hours, to conduct appraisals or updates thereof of the Borrower's and the Subsidiary Guarantors' Inventory, such appraisals and updates to include, without limitation, information required by applicable law and regulations; *provided, however*, if a Weekly Reporting Period has occurred during such calendar year, such appraisals may occur twice per fiscal year if requested by the Administrative Agent; *provided, further, however*, if an Event of Default has occurred and is continuing there shall be no limitation as to the number and frequency of such appraisals during such calendar year at the sole expense of the Borrower. For purposes of this Section 6.17, it is understood and agreed that a single appraisal may consist of examinations conducted at multiple relevant sites and involve one or more relevant Loan Parties and their assets.

Section 6.18 Field Examinations.

If requested by the Administrative Agent, at the expense of the Borrower, once per fiscal year of the Borrower at any time as determined by the Administrative Agent, the Borrower will permit the Administrative Agent or professionals (including consultants, accountants, lawyers and appraisers) retained by the Administrative Agent, and, unless an Event of Default then exists and is continuing, on reasonable prior notice and during normal business hours, to conduct field examinations or updates

thereof to ensure the adequacy of Collateral included in the Borrowing Base and related reporting and control systems; *provided, however*, if a Weekly Reporting Period has occurred during such calendar year, such field examinations may occur twice per fiscal year if requested by the Administrative Agent; *provided further, however*, if an Event of Default has occurred and is continuing during any calendar year there shall be no limitation as to the number and frequency of such field examinations during such calendar year at the sole expense of the Borrower. For purposes of this Section 6.18, it is understood and agreed that a single field examination may consist of examinations conducted at multiple relevant sites and involve one or more relevant Loan Parties and their assets.

Section 6.19 Administration of Certain Collateral; Cash Management.

(a) Records and Schedules of Accounts. The Borrower and each Subsidiary Guarantor shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to the Administrative Agent sales, collection, reconciliation and other reports in form reasonably satisfactory to the Administrative Agent, on such periodic basis as the Administrative Agent may reasonably request. If Accounts in an aggregate face amount of \$3,000,000 or more cease to be Eligible Accounts, the Borrower shall notify the Administrative Agent of such occurrence promptly (and in any event within two (2) Business Days) after the Borrower or any Subsidiary Guarantor has knowledge thereof.

(b) Taxes. If an Account of the Borrower or any Subsidiary Guarantor includes a charge for any Taxes, the Administrative Agent is authorized, in its reasonable discretion, to pay the amount thereof to the proper taxing authority for the account of the Borrower or such Subsidiary Guarantor and to charge such Loan Party therefor; *provided, however*, that neither the Administrative Agent nor Lenders shall be liable for any Taxes that may be due from the Borrower or any Subsidiary Guarantor or with respect to any Collateral.

(c) Account Verification. If an Event of Default exists and is continuing, the Administrative Agent shall have the right at any time (subject to applicable Laws), in the name of the Borrower, any Subsidiary Guarantor or the Administrative Agent or any designee of the Administrative Agent, to verify the validity, amount or any other matter relating to any Accounts of the Borrower or any Subsidiary Guarantor by mail, telephone or otherwise. The Borrower and each Subsidiary Guarantor shall cooperate fully with the Administrative Agent in an effort to facilitate and promptly conclude any such verification process.

(d) Maintenance of Cash Management System.

(i) Schedule of DDAs. Section 6.19(d)(i) of the Confidential Disclosure Letter sets forth all DDAs maintained by the Loan Parties as of the Closing Date, including with respect to each depository, (i) the name and address of such depository, (ii) the account number(s) maintained with such depository, and (iii) a contact person at such depository. Except as set forth below pursuant to the Cash Management System, each Loan Party shall be the sole account holder of each DDA and shall not allow any other Person to have control over a DDA or any property deposited therein.

(ii) Cash Management System. The Loan Parties will establish and maintain the cash management system described below (the “**Cash Management System**”):

(A) On or prior to the date that is 90 days after the Closing Date (or, unless a Cash Dominion Period is continuing or an Event of Default has occurred, such later date as the Administrative Agent may, in its sole discretion, consent to in writing), the Borrower shall have established a concentration account in its name (the “**Concentration Account**”) with a bank reasonably acceptable to the Administrative Agent.

(B) Except in connection with Excluded Deposit Accounts, on or prior to date that is 90 days after the Closing Date (or, unless a Cash Dominion Period is continuing or an Event of Default has occurred, such later date as the Administrative Agent may, in its sole discretion, consent to in writing), (i) each Loan Party that maintains a DDA shall deliver to the Administrative Agent for each DDA (other than Excluded Deposit Accounts) maintained by such Loan Party, a multi-party blocked account control agreement or lockbox account agreement between the Administrative Agent, the bank at which each such DDA is maintained and the relevant Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent (each a “**DDA Control Agreement**”) and (ii) the Borrower shall deliver to the Administrative Agent for the Concentration Account, a multi-party blocked account control agreement or lockbox account agreement between the Administrative Agent, the bank at which the Concentration Account is maintained and the Borrower, in form and substance reasonably satisfactory to the Administrative Agent (the “**Concentration Account Control Agreement**” and, together with any DDA Control Agreement, each a “**Blocked Account Agreement**”). Each such DDA Control Agreement shall provide, among other things, that, during the continuance of a Cash Dominion Period, the bank at which any such Blocked Account is maintained, agrees to forward on a daily basis all available amounts in each such account directly or by transfer through one or more Blocked Accounts to the Concentration Account. In addition, the Concentration Account Control Agreement shall provide, among other things, that during the continuation of a Cash Dominion Period, the bank at which such Concentration Account is maintained shall, upon receipt of notice by the Administrative Agent (given in its discretion or at the direction of Required Lenders), make daily sweeps from the Concentration Account into the Administrative Agent’s account for application to the Obligations. From and after the 90th day following the Closing Date, no Loan Party shall maintain any DDA (other than an Excluded Deposit Account) unless it shall be subject to a Blocked Account Agreement.

(C) During a Cash Dominion Period, the balance from time to time standing to the credit of the Blocked Accounts shall be distributed as directed in accordance with the provisions of the Blocked Account Agreements. Other than during a Cash Dominion Period, the balance from time to time standing to the credit of the Blocked Accounts and the Concentration Account shall be distributed as directed by the Borrower.

(D) So long as no Default or Event of Default has occurred and is continuing, the Loan Parties may amend Section 6.19(d)(i) of the Confidential Disclosure Letter to add or replace a depository bank or any Blocked Account; *provided* that (i) the Administrative Agent shall have consented in writing in advance to the opening of such new or replacement Blocked Account with the relevant bank (which consent shall not be unreasonably withheld or delayed) and (ii) prior to the time of the opening of such account, the applicable Loan Party and such bank shall have executed and delivered to the Administrative Agent a Blocked Account Agreement in form and substance reasonably satisfactory to the Administrative Agent. Each Loan Party shall cease using any Blocked Account to hold proceeds of Collateral promptly and in any event within 30 days (or such later date as the Administrative Agent may, in its sole reasonable discretion, consent to in

writing) following notice from the Administrative Agent to the Borrower that (A) the creditworthiness of the bank holding such Blocked Account is no longer acceptable in the Administrative Agent's Permitted Discretion, or (B) the operating performance, funds transfer or availability procedures or performance with respect to accounts or lockboxes of the bank holding such Blocked Account or Administrative Agent's liability under any Blocked Account Agreement with such bank is no longer acceptable in the Administrative Agent's Permitted Discretion.

(E) The Blocked Accounts shall be Collateral accounts, with all cash, checks and other similar items of payment in such accounts securing payment of the Loans and all other Obligations, and in which the applicable Loan Party shall have granted a Lien to the Administrative Agent, for the benefit of the Secured Parties, pursuant to this Agreement. Each Loan Party shall use commercially reasonable efforts to ensure that all cash, checks and other similar items of payment in the Blocked Accounts are solely in respect of Collateral.

(F) All collections of Accounts and all proceeds of the sale or other disposition of any Collateral, other than collections and proceeds that are held in Excluded Deposit Accounts in accordance with the terms hereof, shall be deposited directly into a Blocked Account. In the event that, notwithstanding the provisions of this clause (F), any Loan Party receives or otherwise has dominion and control of any proceeds or collections of Accounts or proceeds of Collateral outside of the Blocked Accounts, such proceeds and collections shall be held in trust by such Loan Party for the Administrative Agent and shall, not later than four (4) Business Days after receipt thereof, be deposited into a Blocked Account or dealt with in such other fashion as such Loan Party may be instructed by the Administrative Agent.

(e) Account Statements. During the continuance of a Cash Dominion Period, each Loan Party shall provide the Administrative Agent with any information and account statements with respect to the Blocked Accounts as reasonably requested by Administrative Agent.

(f) Sole Dominion of Administrative Agent. During a Cash Dominion Period, the Concentration Account shall at all times be under the sole dominion and control of the Administrative Agent. Each Loan Party hereby acknowledges and agrees that during a Cash Dominion Period, (i) such Loan Party has no right of withdrawal from the Concentration Account, (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in the Concentration Account shall be transferred daily to the Administrative Agent's account for application to the Obligations. During any Cash Dominion Period, (x) if the Concentration Account is maintained at Citi, the ledger balance in the Concentration Account as of the end of a Business Day shall be transferred to the Administrative Agent's account and applied to the Obligations at the beginning of the next Business Day and (y) if the Concentration Account is not maintained at Citi, payments shall be applied to the Obligations on the Business Day of receipt of good funds by the Administrative Agent in the account designated by the Administrative Agent for such purposes; *provided* that if any such payment is received after 2:00 p.m., it may be deemed received on the next Business Day. The Administrative Agent shall, unless otherwise directed in writing by the Required Lenders or otherwise required by Section 8.03, apply all available funds in its account which were deposited pursuant to this clause (f) in such order as the Administrative Agent determines in its sole discretion, *provided* that to the extent no Outstanding Amounts are outstanding, the Administrative Agent may, in its discretion, unless otherwise directed in writing by the Required Lenders, either (i) apply such funds to the Obligations in such order as the Administrative Agent determines or (ii) return such funds to the Borrower (it being understood that if as a result of such application, a credit balance exists, the balance shall not accrue interest in favor of

Borrower). During any Cash Dominion Period, the Borrower and each Subsidiary Guarantor irrevocably waives the right to direct the application of any payments or Collateral proceeds, and agrees that the Administrative Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations, in such manner as the Administrative Agent determines in its discretion.

Section 6.20 Post-Closing Covenants.

(a) Within ten (10) Business Days following the Closing Date (or such later date as the Administrative Agent may, in its reasonable discretion, consent to in writing), the Borrower will permit the Administrative Agent to complete a field examination to ensure the adequacy of Collateral included in the Borrowing Base and related reporting and control systems.

(b) Within ten (10) Business Days following the Closing Date (or such later date as the Administrative Agent may, in its reasonable discretion, consent to in writing), the Borrower will permit the Administrative Agent or professionals (including consultants, accountants, lawyers and appraisers) retained by the Administrative Agent to complete appraisals of the Borrower's and the Subsidiary Guarantors' Inventory, such appraisals and updates to include, without limitation, information required by applicable law and regulations.

ARTICLE VII.
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under ABL Secured Treasury Services Agreements or obligations under ABL Secured Hedge Agreements) which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized, back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer), then from and after the Closing Date, Holdings and the Borrower (and, with respect to Section 7.11 only, the Borrower and, with respect to Section 7.14 only, Holdings) shall not and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

Section 7.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) (i) Liens created pursuant to any Loan Documents and (ii) to the extent required by the Existing Notes Indenture as in effect on the Closing Date, Liens securing the Existing Notes; provided that Liens permitted pursuant to this clause (ii) shall be subject to the Term Loan Intercreditor Agreement in the capacity of Fixed Asset Obligations;

(b) Liens existing on the Closing Date and listed in Section 7.01(b) of the Confidential Disclosure Letter and any modifications, replacements, renewals, refinancings or extensions thereof; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof,

and (ii) the replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 7.03;

(c) Liens for taxes, assessments or governmental charges that are not overdue for a period of more than thirty (30) days or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) statutory or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, so long as, in each case, such Liens secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any of its Restricted Subsidiaries;

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

(g) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries, taken as a whole, and any exceptions on the Mortgage Policies issued in connection with the Mortgaged Properties;

(h) Liens securing judgments or orders for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which (i) do not interfere in any material respect with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) do not secure any Indebtedness or (iii) are permitted by Section 7.05;

(j) Liens (i) in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or (ii) on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit

issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-208 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institutions general terms and conditions;

(l) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Sections 7.02(g), (i) and (n) or, to the extent related to any of the foregoing, Section 7.02(r) to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens (i) in favor of the Borrower or a Restricted Subsidiary on assets of a Restricted Subsidiary that is not a Loan Party securing Indebtedness permitted under Section 7.03(b), (d) and (u) and (ii) in favor of the Borrower or any Subsidiary Guarantor;

(n) any interest or title of a lessor, sublessor, licensor or sublicensor under leases, subleases, licenses or sublicenses entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

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

(p) Liens deemed to exist in connection with Investments in repurchase agreements under Section 7.02;

(q) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(r) Liens that are contractual rights of set-off or rights of pledge (i) relating to the establishment of depository relations with banks or other deposit-taking financial institutions and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

- (s) Liens solely on any cash earned money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;
- (t) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located;
- (u) Liens to secure Indebtedness permitted under Section 7.03(e); *provided* that (i) such Liens are created within 270 days of the acquisition, construction, repair, lease or improvement of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits and (iii) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to such Capitalized Leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross-collateralized to other financings of equipment provided by such lender;
- (v) Liens on property of any Subsidiary that is not a Loan Party, which Liens secure Indebtedness of any of Holdings, the Borrower or any Subsidiary permitted under Section 7.03;
- (w) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 6.14), in each case after the Closing Date (other than Liens on the Equity Interests of any Person that becomes a Restricted Subsidiary); *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition), and (iii) the Indebtedness secured thereby is permitted under Section 7.03(g);
- (x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;
- (y) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings;
- (z) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(aa) the modification, replacement, renewal or extension of any Lien permitted by clauses (b), (u) and (w) of this Section 7.01; *provided* that (i) the Lien does not extend to any additional property, other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien and (B) proceeds and products thereof, and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03 (to the extent constituting Indebtedness);

(bb) Liens with respect to property or assets of the Borrower or any of its Restricted Subsidiaries securing obligations in an aggregate principal amount outstanding at any time not to exceed the greater of \$30,000,000 and 1.50% of Total Assets, in each case determined as of the date of incurrence;

(cc) [reserved];

(dd) [reserved];

(ee) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(ff) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(gg) [reserved]; and

(hh) Liens securing Indebtedness, without duplication, permitted under Section 7.03(s) or (x) (including, for the avoidance of doubt, any Liens securing obligations referred to in clause (ii) of the definition of "Term Loan Facility Indebtedness"); *provided* that such Liens shall be subject to the Term Loan Intercreditor Agreement in the capacity of Fixed Asset Obligations.

Notwithstanding the foregoing, none of the Liens permitted pursuant to this Agreement may at any time attach to any Accounts or Inventory, other than Permitted Liens or those permitted under clause (hh) of this Section 7.01, unless the Liens thereon are subordinated to the Lien of the Administrative Agent in a manner reasonably acceptable to the Administrative Agent. The ability of a Loan Party to incur a Lien pursuant to this Section 7.01 shall not limit or restrict the ability of the Administrative Agent to establish any Reserve relating thereto.

Section 7.02 Investments.

Make or hold any Investments, except:

(a) Investments by the Borrower or any of its Restricted Subsidiaries in assets that were Cash Equivalents when such Investment was made;

(b) loans or advances to officers, directors and employees of any Loan Party (or any

direct or indirect parent thereof) or any of its Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests of Holdings or any direct or indirect parent thereof; *provided* that, to the extent such loans or advances are made in cash, the amount of such loans and advances used to acquire such Equity Interests shall be contributed to the Borrower in cash as common equity and (iii) for any other purposes not described in the foregoing clauses (i) and (ii); *provided* that the aggregate principal amount outstanding at any time under clause (iii) above shall not exceed \$10,000,000;

(c) Investments (i) by the Borrower or any Restricted Subsidiary in any Loan Party (other than Holdings), (ii) by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party and (iii) by any Loan Party in any Restricted Subsidiary that is not a Loan Party; *provided* that (A) any such Investments made pursuant to this clause (iii) in the form of intercompany loans shall be evidenced by notes that, unless they are Excluded Assets, have been pledged (individually or pursuant to a global note) to the Administrative Agent for the benefit of the Lenders (it being understood and agreed that any Investments permitted under this clause (iii) that are not so evidenced as of the Closing Date are not required to be so evidenced and pledged until the date that is sixty (60) days after the Closing Date (or such later date as may be approved by the Administrative Agent)) and (B) the aggregate amount of Investments made pursuant to this clause (iii) shall not exceed at any time outstanding the sum of (x) together with Investments pursuant to Section 7.02(i)(iv)(1), the greater of \$75,000,000 and 3.25% of Total Assets and (y) the Cumulative Credit at such time;

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

(e) Investments (excluding loans and advances made in lieu of Restricted Payments pursuant to and limited by Section 7.02(m) below) consisting of transactions permitted under Sections 7.01, 7.03 (other than 7.03(c) and (d)), 7.04 (other than 7.04(c)(ii) or (e)), 7.05 (other than 7.05(e)), 7.06 (other than 7.06(d) or (h)(iv)) and 7.13, respectively;

(f) Investments (i) existing or contemplated on the Closing Date or made pursuant to legally binding written contracts in existence on the Closing Date, in each case set forth in Section 7.02(f) of the Confidential Disclosure Letter and any modification, replacement, renewal, reinvestment or extension thereof that does not in each case increase the amount of such Investment and (ii) existing on the Closing Date by the Borrower or any Restricted Subsidiary in the Borrower or any other Restricted Subsidiary and any modification, renewal or extension thereof;

(g) Investments in Swap Contracts permitted under Section 7.03;

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

(i) any acquisition of all or substantially all the assets of a Person or any Equity

Interests in a Person that becomes a Restricted Subsidiary or division or line of business of a Person (or any subsequent Investment made in a Person, division or line of business previously acquired in a Permitted Acquisition), in a single transaction or series of related transactions, if immediately after giving Pro Forma Effect thereto: (i) no Event of Default shall have occurred and be continuing, (ii) the Payment Condition is satisfied; (iii) to the extent required by the Collateral and Guarantee Requirement, (A) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral and (B) any such newly created or acquired Subsidiary (other than an Excluded Subsidiary or an Unrestricted Subsidiary) shall become Guarantors, in each case, in accordance with Section 6.11, and (iv) the aggregate amount of Investments made by virtue of this Section 7.02(i) in Persons that do not become Loan Parties shall not exceed at any time outstanding the sum of (1) together with Investments pursuant to Section 7.02(c)(iii)(B)(x), the greater of \$75,000,000 and 3.25% of Total Assets and (2) the Cumulative Credit at such time (any such acquisition, a “**Permitted Acquisition**”); it being understood that no Accounts or Inventory acquired in a Permitted Acquisition (to the extent such Permitted Acquisition, when taken together with all other Investments pursuant to clause (n) below and Permitted Acquisitions pursuant to this clause (i) (other than Permitted Acquisitions under this clause (i) and Investments pursuant to clause (n) below in respect of which the assets acquired therein a field examination and/or appraisal shall have been completed in accordance with this clause (i) or clause (n) below) made during such fiscal year are in excess of \$2,000,000) shall be included as Eligible Accounts or Eligible Inventory until a field examination (and, if required by the Administrative Agent, an appraisal) with respect thereto has been completed to the satisfaction of the Administrative Agent, including the establishment of Reserves required in the Administrative Agent’s Permitted Discretion; *provided that* field examinations and appraisals in connection with Permitted Acquisitions shall not count against the limited number of field examinations or appraisals for which expense reimbursement may be sought under Section 6.17 or 6.18;

(j) Investments made in connection with the Transactions;

(k) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) loans and advances to any direct or indirect parent of the Borrower not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made to such parent in accordance with Sections 7.06(f), (g) or (h), such Investment being treated for purposes of the applicable clause of Section 7.06, including any limitations, as if a Restricted Payment made pursuant to such clause;

(n) Investments in an aggregate amount outstanding pursuant to this clause (n) (valued at the time of the making thereof, and without giving effect to any write downs or write

offs thereof) at any time not to exceed (x) the greater of \$90,000,000 and 4.00% of Total Assets (in each case, net of any return in respect thereof, including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) plus (y) if the Payment Condition is satisfied, the Cumulative Credit at such time; it being understood that no Accounts or Inventory acquired in an Investment (to the extent such Investment, when taken together with all Permitted Acquisitions pursuant to clause (i) above and all other Investments pursuant to this clause (n) (other than Investments pursuant to this clause (n) and Permitted Acquisitions in respect of which the assets acquired therein a field examination and/or appraisal shall have been completed) made during such fiscal year pursuant to this clause (n) or clause (i) above are in excess of \$2,000,000) pursuant to this clause (n) shall be included as Eligible Accounts or Eligible Inventory until a field examination (and, if required by the Administrative Agent, an appraisal) with respect thereto has been completed to the satisfaction of the Administrative Agent, including the establishment of Reserves required in the Administrative Agent's Permitted Discretion; *provided* that, field examinations and appraisals in connection with Investments under this clause (n) shall not count against the limited number of field examinations or appraisals for which expense reimbursement may be sought under Section 6.17 or 6.18;

(o) advances of payroll payments to employees in the ordinary course of business;

(p) (i) Investments made in the ordinary course of business in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors in the ordinary course of business and (ii) Investments to the extent that payment for such Investments is made solely with Equity Interests of the Borrower (or any direct or indirect parent of the Borrower);

(q) Investments of a Restricted Subsidiary acquired after the Closing Date or of a corporation merged or amalgamated or consolidated into the Borrower or merged, amalgamated or consolidated with a Restricted Subsidiary in accordance with Section 7.04 after the Closing Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(r) Investments made by any Restricted Subsidiary that is not a Loan Party to the extent such Investments are financed with the proceeds received by such Restricted Subsidiary from an Investment in such Restricted Subsidiary permitted under this Section 7.02;

(s) Guarantees by the Borrower or any of its Restricted Subsidiaries of leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(t) [reserved];

(u) the acquisition of the Split Brands pursuant to the Split Brands Acquisition Agreement as in effect on the Closing Date or as amended in any manner not material and adverse to the Lenders;

(v) Investments consisting of any Foreign IP Transfer; and

(w) Investments made with Excluded Contributions.

Section 7.03 Indebtedness.

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

(a) Indebtedness of any Loan Party under the Loan Documents;

(b) (i) Indebtedness outstanding on the Closing Date and listed in Section 7.03(b) of the Confidential Disclosure Letter and any Permitted Refinancing thereof and (ii) intercompany Indebtedness outstanding on the Closing Date and any Permitted Refinancing thereof, of which any amount owed by a Restricted Subsidiary that is not a Loan Party to a Loan Party shall be evidenced by an Intercompany Note; *provided* that all such Indebtedness of any Loan Party owed to any Person or Restricted Subsidiary that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to an Intercompany Note;

(c) Guarantees by the Borrower and any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary of the Borrower otherwise permitted hereunder; *provided* that (A) no Guarantee by any Restricted Subsidiary of any Indebtedness constituting a Specified Junior Financing Obligation shall be permitted unless such Guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein and (B) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(d) Indebtedness of the Borrower or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or issued or transferred to any direct or indirect parent of a Loan Party which is substantially contemporaneously transferred to a Loan Party or any Restricted Subsidiary of a Loan Party) to the extent constituting an Investment permitted by Section 7.02; *provided* that all such Indebtedness of any Loan Party owed to any Person or Restricted Subsidiary that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to an Intercompany Note;

(e) (i) Attributable Indebtedness and other Indebtedness (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred by the Borrower or any Restricted Subsidiary prior to or within 270 days after the acquisition, lease or improvement of the applicable asset and any Permitted Refinancing thereof in an aggregate amount not to exceed the greater of \$35,000,000 and 2.00% of Total Assets, in each case determined at the time of incurrence (together with any Permitted Refinancings thereof) at any time outstanding and (ii) Attributable Indebtedness arising out of sale-leaseback transactions permitted by Section 7.05(m) and any Permitted Refinancing of such Attributable Indebtedness;

(f) Indebtedness in respect of Swap Contracts designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes and Guarantees thereof;

(g) Indebtedness of the Borrower or any Restricted Subsidiary assumed in connection with any Permitted Acquisition; *provided* that such Indebtedness is not incurred in contemplation of such Permitted Acquisition, and any Permitted Refinancing thereof; *provided further* that, after giving *pro forma* effect to such Permitted Acquisition and the assumption of such Indebtedness, the aggregate amount of such Indebtedness does not exceed (x) \$25,000,000 at any time outstanding plus (y) any additional amount of such Indebtedness so long as the Total Leverage Ratio is no greater than 5.25 :1.00 and, if such Indebtedness is secured, the Secured Leverage Ratio is no greater than 4.00:1.00, in each case determined on a Pro Forma Basis; *provided* that in the case of clause (y), any such Indebtedness incurred by a Restricted Subsidiary that is not a Loan Party, together with any Indebtedness incurred by a Restricted Subsidiary that is not a Loan Party pursuant to Section 7.03(s), does not exceed in the aggregate at any time outstanding the greater of \$35,000,000 and 2.00% of Total Assets, in each case determined at the time of incurrence;

(h) Indebtedness representing deferred compensation to employees of the Borrower or any of its Restricted Subsidiaries incurred in the ordinary course of business;

(i) Indebtedness consisting of promissory notes issued by the Borrower or any of its Restricted Subsidiaries to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower or any direct or indirect parent of the Borrower permitted by Section 7.06;

(j) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earnouts) or other similar adjustments;

(k) Indebtedness consisting of obligations of the Borrower or any of its Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions, and Permitted Acquisitions or any other Investment expressly permitted hereunder;

(l) Cash Management Obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business and any Guarantees thereof;

(m) Indebtedness in an aggregate principal amount that at the time of, and after giving effect to, the incurrence thereof, would not exceed the greater of \$90,000,000 and 4.00% of Total Assets; *provided* that the aggregate principal amount of Indebtedness outstanding in reliance on this clause (m) in respect of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party shall not exceed in the aggregate at any time outstanding the greater of \$35,000,000 and 2.00% of Total Assets, in each case determined at the time of incurrence;

(n) Indebtedness consisting of (a) the financing of insurance premiums or (b) take-

or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(o) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(p) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(q) Indebtedness in respect of the Senior Notes and the Existing Notes (including, in each case, any guarantees thereof) and, in each case, any Permitted Refinancing thereof;

(r) Indebtedness supported by a Letter of Credit, in a principal amount not to exceed the face amount of such Letter of Credit;

(s) Permitted Ratio Debt and any Permitted Refinancing thereof;

(t) [reserved];

(u) Indebtedness incurred by a Foreign Subsidiary which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (u) and then outstanding, does not exceed \$15,000,000;

(v) [reserved];

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

(x) Term Loan Facility Indebtedness of the Loan Parties (A) under clause (i) of the definition of Term Loan Facility Indebtedness (a) in an aggregate principal amount not to exceed \$660,000,000 and (b) in an aggregate principal amount not to exceed the sum of (1) \$220,000,000 plus (2) an aggregate principal amount of incremental loans under the Term Loan Credit Agreement so long as the Consolidated First Lien Net Leverage Ratio is no more than 4.00 to 1.00 as of the last day of the most recently ended period of four fiscal quarters of the Borrower for which financial statements are internally available (determined on the date of incurrence of such incremental loans, after giving effect to any such incurrence on a Pro Forma Basis, and excluding from clause (x) of Consolidated First Lien Net Debt the cash proceeds of such incremental loans), minus (3) the amount of all secured Permitted Ratio Debt incurred pursuant to Section 7.03(s), minus (4) the amount of all Incremental Revolving Credit Commitments incurred

pursuant to Section 2.14 and (B) under clause (ii) of the definition of Term Loan Facility Indebtedness.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including OID) incurred in connection with such refinancing.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

Section 7.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions), except that:

(a) any Restricted Subsidiary may merge, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that the Borrower shall be the continuing or surviving Person or (ii) one or more other Restricted Subsidiaries; *provided* that when any Person that is a Loan Party is merging with a Restricted Subsidiary, a Loan Party shall be the continuing or surviving Person;

(b) (i) any Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is not a Loan Party, (ii) any Subsidiary may liquidate or dissolve and (iii) any Subsidiary may change its legal form if, with respect to clauses (ii) and (iii), the Borrower determines in good faith that such action is in the best interest of the Borrower and its Subsidiaries and is not materially disadvantageous to the Lenders (it being understood that in the case of any change in legal form, a Subsidiary that is a Guarantor will remain a Guarantor unless such Guarantor is otherwise permitted to cease being a Guarantor hereunder);

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Guarantor, then (i) the transferee must be a Guarantor (other than Holdings) or the Borrower or (ii) to the extent constituting an Investment,

such Investment must be a permitted Investment in or Indebtedness of a Restricted Subsidiary which is not a Loan Party in accordance with Sections 7.02 (other than Section 7.02(e)) and 7.03, respectively; and

(d) so long as no Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the “**Successor Company**”), (A) the Successor Company shall be an entity organized or existing under the Laws of the United States, any state thereof or the District of Columbia, (B) the Successor Company shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Company’s obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that its obligations thereunder shall apply to the Successor Company’s obligations under the Loan Documents, (E) if requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Administrative Agent) confirmed that its obligations thereunder shall apply to the Successor Company’s obligations under the Loan Documents, and (F) the Borrower shall have delivered to the Administrative Agent an officer’s certificate and an opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided, further*, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, the Borrower under this Agreement;

(e) so long as no Default has occurred and is continuing or would result therefrom (in the case of a merger involving a Loan Party), any Restricted Subsidiary may merge or consolidate with any other Person in order to effect an Investment permitted pursuant to Section 7.02; *provided* that the continuing or surviving Person shall be a Restricted Subsidiary of the Borrower, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement;

(f) Holdings, the Borrower and the Restricted Subsidiaries may consummate the Acquisition, related transactions contemplated by the Acquisition Agreement (and documents related thereto) and the Transactions; and

(g) so long as no Default has occurred and is continuing or would result therefrom, a merger, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05.

Section 7.05 Dispositions.

Make any Disposition or enter into any agreement to make any Disposition (other than as part of or in connection with the Transactions), except:

(a) Dispositions of obsolete, worn out, used or surplus property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful in the conduct of the business of the Borrower or any of its Restricted Subsidiaries;

(b) Dispositions of inventory, goods held for sale in the ordinary course of business and immaterial assets (including allowing any registrations or any applications for registration of any IP Rights to lapse or go abandoned) in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Borrower or any Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party, (i) the transferee thereof must be a Loan Party (other than Holdings) or (ii) if such transaction constitutes an Investment, such transaction is permitted under Section 7.02;

(e) to the extent constituting Dispositions, transactions permitted by Sections 7.01, 7.02 (other than Section 7.02(e)), 7.04 (other than Section 7.04(g)) and 7.06 (other than 7.06(d));

(f) [Reserved];

(g) Dispositions of Cash Equivalents;

(h) (i) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business or which do not materially interfere with the business of the Borrower or any of its Restricted Subsidiaries, (ii) Dispositions of IP Rights that do not materially interfere with the business of the Borrower or any of its Restricted Subsidiaries and (iii) any Foreign IP Transfer;

(i) transfers of property subject to Casualty Events;

(j) Dispositions of property; *provided* that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default has occurred and is continuing), no Default shall have occurred and been continuing or would result from such Disposition, (ii) with respect to any Disposition pursuant to this clause (j) for a purchase price in excess of \$12,500,000 the Borrower or any of its Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01 and Liens permitted by Sections 7.01(a), (f), (k), (l), (p), (q), (r)(i), (r)(ii) and (s)); *provided, however*, that for the purposes of this clause (j)(ii), the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by the Borrower or the applicable

Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of the applicable Disposition, and (C) aggregate non-cash consideration received by the Borrower or the applicable Restricted Subsidiary having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed the greater of \$35,000,000 and 2.00% of Total Assets at any time (net of any non-cash consideration converted into cash and Cash Equivalents) and (iii) to the extent the aggregate amount of Net Proceeds received by the Borrower or a Restricted Subsidiary from Dispositions made pursuant to this Section 7.05(j) in the aggregate exceeds \$75,000,000 in any fiscal year, with unused amounts in any fiscal year being carried over to the next succeeding fiscal year only (*provided* that if any such amount is carried over, it will be deemed used in the applicable subsequent fiscal year only after the amount available in such subsequent fiscal year has been fully used), plus any amount available pursuant to this clause (iii) in the next succeeding fiscal year only (which amount will be permanently reduced if used in the current fiscal year) subject to a maximum of \$150,000,000 in any fiscal year, all Net Proceeds in excess of such amount in such fiscal year shall be applied to prepay Term Loan Facility Indebtedness and may not be reinvested in the business of the Borrower or a Restricted Subsidiary or, if no Term Loan Facility Indebtedness is then outstanding, to repay other Indebtedness (other than the Obligations or any Junior Financing) of the Borrower or any Restricted Subsidiary; *provided* that, for the avoidance of doubt, all Net Proceeds arising from any Dispositions made pursuant to this clause (j) that are not in excess of such \$150,000,000 amount in such fiscal year shall be applied to repay Term Loan Facility Indebtedness or, if no Term Loan Facility Indebtedness is then outstanding, to repay other Indebtedness (other than the Obligations or any Junior Financing) of the Borrower or any Restricted Subsidiary; *provided further* that Accounts and Inventory may only be the subject of Dispositions pursuant to this clause (j) in any fiscal year of the Borrower to the extent such Disposed Accounts and Inventory (valued in accordance with the definition of the term "Borrowing Base" without giving effect to the advance rates set forth therein) aggregate to no more than 20% of the Borrowing Base for all such Dispositions in such fiscal year, measured as of the time of each such Disposition; *provided further* that if any Accounts or Inventory are Disposed of pursuant to this clause (j), then the Borrower shall, upon the closing of such Disposition, deliver an updated Borrowing Base Certificate and, for the avoidance of doubt, comply with the provisions of Section 2.05(b)(i) to the extent required;

(k) [Reserved];

(l) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business; *provided* that upon the Disposition or discount pursuant to this Section 7.05(l) of Collateral of any Loan Party included in the Borrowing Base, if the Net Proceeds thereof in any transaction or series of related transactions are, or are expected to be, in excess of \$1,000,000, the Borrower shall furnish an updated Borrowing Base Certificate promptly upon the Disposition or discount of such Collateral, and for the avoidance of doubt, comply with the provisions of Section 2.05(b)(i) to the extent required;

(m) Dispositions of property pursuant to sale-leaseback transactions; *provided* that to the extent the aggregate Net Proceeds from all such Dispositions since the Closing Date exceeds \$75,000,000, such excess may be reinvested in accordance with the definition of "Net Proceeds"

or otherwise applied to prepay Term Loan Facility Indebtedness or, if no Term Loan Facility Indebtedness is then outstanding, other Indebtedness (other than the Obligations and any Junior Financing) of the Borrower or any Restricted Subsidiary in accordance with the mandatory prepayment provisions thereof;

(n) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater value or usefulness to the business of the Borrower and its Subsidiaries as a whole, as determined in good faith by the management of the Borrower;

(o) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(p) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the unwinding of any Swap Contract;

(r) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial IP Rights;

(s) [reserved]; and

(t) the issuance of Nominal Shares.

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(e), (i), (p), (q) and (r) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition as determined by the Borrower in good faith. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 7.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower, and other Restricted Subsidiaries of the Borrower (and, in the case of such a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests (other than Disqualified Equity Interests not otherwise permitted by Section 7.03) of such Person (and, in the case of such a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower

and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(c) Restricted Payments made (i) on the Closing Date to consummate the Transactions, (ii) in respect of working capital adjustments or purchase price adjustments pursuant to the Acquisition Agreement or the Split Brands Acquisition Agreement and (iii) in order to satisfy indemnity and other similar obligations under the Acquisition Agreement or the Split Brands Acquisition Agreement;

(d) to the extent constituting Restricted Payments, the Borrower (or any direct or indirect parent thereof) and its Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 7.02 (other than 7.02(e) and (m)), 7.04 or 7.08 (other than Section 7.08(f) or 7.08(l));

(e) repurchases of Equity Interests in Holdings, the Borrower or any Restricted Subsidiary of Holdings deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(f) the Borrower and each Restricted Subsidiary may (i) pay (or make Restricted Payments to allow Holdings or any other direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of such Restricted Subsidiary (or of the Borrower or any other such direct or indirect parent thereof) held by any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Subsidiaries or (ii) make Restricted Payments in the form of distributions to allow Holdings or any direct or indirect parent of Holdings to pay principal or interest on promissory notes that were issued to any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such Equity Interests held by such Persons, in each case, upon the death, disability, retirement or termination of employment of any such Person or pursuant to any employee, manager or director equity plan, employee, manager or director stock option plan or any other employee, manager or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director, officer or consultant of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Restricted Subsidiaries; *provided* that the aggregate amount of Restricted Payments made pursuant to this clause (f) together with the aggregate amount of loans and advances to Holdings made pursuant to Section 7.02(m) in lieu of Restricted Payments permitted by this clause (f) shall not exceed \$20,000,000 in any calendar year (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of \$40,000,000 in any calendar year); *provided further* that such amount in any calendar year may further be increased by an amount not to exceed:

(A) amounts used to increase the Cumulative Credit pursuant to clauses (b) and (c) of the definition of "Cumulative Credit";

(B) the Net Proceeds of key man life insurance policies received by the Borrower or its Restricted Subsidiaries less the amount of Restricted Payments previously made with the cash proceeds of such key man life insurance policies;

and *provided further* that cancellation of Indebtedness owing to the Borrower from members of management of the Borrower, any of the Borrower's direct or indirect parent companies or any of the Borrower's Restricted Subsidiaries in connection with a repurchase of Equity Interests of any of the Borrower's direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(g) the Borrower may make Restricted Payments in an aggregate amount not to exceed, when combined with prepayment of Indebtedness pursuant to Section 7.13(a)(iv), (x) \$50,000,000, plus (y) if (A) the Total Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 4.75 to 1.00 and (B) the Secured Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 3.75 to 1.00, the Cumulative Credit at such time; *provided*, that with respect to any Restricted Payment made pursuant to clause (y) above, no Default has occurred and is continuing or would result therefrom and the Payment Condition is satisfied;

(h) the Borrower may make Restricted Payments to any direct or indirect parent of the Borrower:

(i) to pay its operating costs and expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries, Transaction Expenses and any reasonable and customary indemnification claims made by directors or officers of such parent attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

(ii) the proceeds of which shall be used to pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) franchise taxes, and other fees and expenses, required to maintain its (or any of its direct or indirect parents') corporate existence;

(iii) for any taxable period in which the Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of Borrower is the common parent (a "**Tax Group**"), to pay federal, foreign, state and local income taxes of such Tax Group that are attributable to the taxable income of the Borrower and/or its Subsidiaries; *provided* that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that the Borrower and its Subsidiaries would have been required to pay as a stand-alone Tax Group; *provided further* that the permitted payment pursuant to this clause (iii) with respect to any Taxes of any Unrestricted Subsidiary for any taxable period shall be limited to the amount actually paid with respect to such period by such Unrestricted Subsidiary to the Borrower or its Restricted Subsidiaries for the purposes of paying such consolidated, combined or similar income Taxes;

(iv) to finance any Investment that would be permitted to be made pursuant to Section 7.02 and Section 7.08 if such parent were subject to such sections; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or the Restricted Subsidiaries or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into the Borrower or its Restricted Subsidiaries in order to consummate such Permitted Acquisition or Investment, in each case, in accordance with the requirements of Section 6.11;

(v) the proceeds of which (A) shall be used to pay customary salary, bonus and other benefits payable to officers and employees of Holdings or any direct or indirect parent company of Holdings to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries or (B) shall be used to make payments permitted under Sections 7.08 (i) and (p) (but only to the extent such payments have not been and are not expected to be made by the Borrower or a Restricted Subsidiary); and

(vi) the proceeds of which shall be used by Holdings to pay (or to make Restricted Payments to allow any direct or indirect parent thereof to pay) fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering by Holdings (or any direct or indirect parent thereof) that is directly attributable to the operations of the Borrower and its Restricted Subsidiaries;

(i) payments made or expected to be made by Holdings, the Borrower or any of the Restricted Subsidiaries in respect of withholding or similar Taxes payable by or with respect to any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) and any repurchases of Equity Interests in consideration of such payments including deemed repurchases, in each case, in connection with the exercise of stock options;

(j) Holdings, the Borrower or any of the Restricted Subsidiaries may pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition or any vesting of Equity Interests; and

(k) Restricted Payments in the amount of any Excluded Contribution.

Section 7.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business reasonably related, complementary, synergistic or ancillary thereto (including related, complementary, synergistic or ancillary technologies) or reasonable extensions thereof.

Section 7.08 Transactions with Affiliates.

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

- (a) transactions among Holdings and its Restricted Subsidiaries,
- (b) on terms substantially as favorable to Holdings or such Restricted Subsidiary as would be obtainable by Holdings or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate,
- (c) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions,
- (d) [reserved],
- (e) [reserved],
- (f) Restricted Payments permitted under Section 7.06,
- (g) transactions by Holdings and its Restricted Subsidiaries permitted under an express provision (including any exceptions thereto) of this Article VII,
- (h) employment and severance arrangements between Holdings and its Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and arrangements in the ordinary course of business,
- (i) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants of the Borrower and its Restricted Subsidiaries (or any direct or indirect parent of the Borrower) in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries,
- (j) transactions pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth in Section 7.08 of the Confidential Disclosure Letter or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect,
- (k) [reserved],
- (l) payments by the Borrower or any of its Subsidiaries pursuant to any tax sharing agreements with any direct or indirect parent of the Borrower to the extent attributable to the ownership or operation of the Borrower and the Subsidiaries, but only to the extent permitted by Section 7.06(h)(iii),

(m) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of Holdings to any former, current or future director, manager, officer, employee or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees or Affiliate of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof,

(n) transactions with customers, clients, joint venture partners, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the board of directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party,

(o) any payments required to be made pursuant to the Acquisition Agreement or the Split Brands Acquisition Agreement,

(p) the payment of reasonable out-of-pocket costs and expenses and indemnities pursuant to the stockholders agreement or the registration and participation rights agreement entered into on the Closing Date in connection therewith,

(q) transactions in which Holdings or any of the Restricted Subsidiaries, as the case may be, deliver to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to Holdings or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this Section 7.08, and

(r) payments to or from, and transactions with, joint ventures (to the extent any such joint venture is only an Affiliate as a result of Investments by Holdings and the Restricted Subsidiaries in such joint venture) in the ordinary course of business to the extent otherwise permitted under Section 7.02.

Section 7.09 Burdensome Agreements.

Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of

(a) any Restricted Subsidiary of the Borrower that is not a Guarantor to make Restricted Payments to the Borrower or any Guarantor or

(b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the Facilities and the Obligations or under the Loan Documents; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which

(i) (x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 7.09) are listed in Section 7.09 of the Confidential Disclosure Letter and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any

permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation,

(ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Borrower; *provided, further*, that this clause (ii) shall not apply to Contractual Obligations that are binding on a Person that becomes a Restricted Subsidiary pursuant to Section 6.14,

(iii) represent Indebtedness of a Restricted Subsidiary of the Borrower which is not a Loan Party which is permitted by Section 7.03 and which does not apply to any Loan Party,

(iv) are customary restrictions that arise in connection with (x) any Lien permitted by Sections 7.01(a), (k), (l), (p), (q), (r)(i), (r)(ii), (s) and (ee) and relate to the property subject to such Lien or (y) arise in connection with any Disposition permitted by Section 7.04 or 7.05 and relate solely to the assets or Person subject to such Disposition,

(v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 7.02 and applicable solely to such joint venture entered into in the ordinary course of business,

(vi) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to (i) the property financed by such Indebtedness and the proceeds and products thereof or (ii) the property secured by such Indebtedness and the proceeds and products thereof so long as the agreements governing such Indebtedness permit the Liens securing the Obligations,

(vii) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the property interest, rights or the assets subject thereto,

(viii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03(e), (g), (n)(a), and (u) and to the extent that such restrictions apply only to the property or assets securing such Indebtedness or, in the case of Section 7.03(g), to the Restricted Subsidiaries incurring or guaranteeing such Indebtedness,

(ix) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary,

(x) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business,

(xi) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business,

(xii) arise in connection with cash or other deposits permitted under Sections 7.01 and 7.02 and limited to such cash or deposit, and

(xiii) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Closing Date and permitted under Section 7.03 (including, without limitation, the Term Loan Credit Agreement, the Senior Notes, the Existing Notes and, in each case, any Permitted Refinancing in respect thereof) that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for Indebtedness of such type (and, in any event, are no more restrictive than the restrictions contained in this Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder.

Section 7.10 Use of Proceeds.

Use the proceeds of any Borrowing, whether directly or indirectly (a) on the Closing Date, in a manner inconsistent with the uses set forth in the preliminary statements to this Agreement or (b) after the Closing Date, use the proceeds for any purpose other than to pay costs and expenses related to the Transactions and for general corporate purposes and working capital needs.

Section 7.11 Consolidated Fixed Charge Coverage Ratio.

During any Minimum Availability Period, the Borrower will not permit the Consolidated Fixed Charge Coverage Ratio for the most recently ended Test Period prior to the commencement of such Minimum Availability Period or for any Test Period ending during such Minimum Availability Period to be less than 1.0 to 1.0.

Section 7.12 Accounting Changes.

Make any change in its fiscal year; *provided, however*, that Holdings may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 7.13 Prepayments, Etc. of Certain Indebtedness.

(a) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled principal, interest and mandatory prepayments shall be permitted) any subordinated Indebtedness incurred under Section 7.03, or any other Indebtedness for borrowed money of a Loan Party that is subordinated to the Obligations expressly by its terms (other than Indebtedness among the Borrower and its Restricted Subsidiaries), any Senior Notes, any unsecured Permitted Ratio Debt or any Permitted Refinancing of any Senior Notes or any unsecured Permitted Ratio Debt (collectively, "**Junior Financing**"), except (i) the refinancing thereof

with any Indebtedness (to the extent such Indebtedness constitutes a Permitted Refinancing and, if such Indebtedness was originally incurred under Section 7.03(g), is permitted pursuant to Section 7.03(g)), to the extent not required to prepay any Loans pursuant to the mandatory prepayment provisions of the Term Loan Credit Agreement, (ii) the conversion or exchange of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parents, (iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary and (iv) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an aggregate amount not to exceed, when combined with the amount of Restricted Payments pursuant to Section 7.06(g), \$50,000,000 plus if (A) the Total Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 4.75 to 1.00, (B) the Secured Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 3.75 to 1.00 and (C) the Payment Condition is satisfied, the Cumulative Credit at such time.

(b) Amend, modify or change in any manner materially adverse to the interests of the Lenders any term or condition of any Junior Financing Documentation in respect of any Junior Financing having an aggregate outstanding principal amount in excess of the Threshold Amount without the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed).

Section 7.14 Permitted Activities.

With respect to Holdings, engage in any material operating or business activities; *provided* that the following and any activities incidental thereto shall be permitted in any event: (i) its ownership of the Equity Interests of Borrower and activities incidental thereto, including payment of dividends and other amounts in respect of its Equity Interests, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) the performance of its obligations with respect to the Loan Documents and any other Indebtedness, (iv) any public offering of its common stock or any other issuance or sale of its Equity Interests, (v) financing activities, including the issuance of securities, incurrence of debt, payment of dividends, making contributions to the capital of the Borrower and guaranteeing the obligations of the Borrower, (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower, (vii) holding any cash or property (but not operating any property), (viii) providing indemnification to officers and directors and (ix) any activities incidental to the foregoing. Holdings shall not incur any Liens on Equity Interests of the Borrower other than those for the benefit of the Obligations and any obligations secured by a Lien permitted pursuant to Section 7.01(a) and (hh).

ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default.

Any of the following from and after the Closing Date shall constitute an event of default (an “**Event of Default**”):

(a) *Non-Payment.* Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants.* Holdings, the Borrower, any Restricted Subsidiary or, in the case of Section 7.14, Holdings only, fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a) or 6.05(a) (solely with respect to the Borrower) or Article VII; *provided* that the covenants in Section 7.11 are subject to cure pursuant to Section 8.04; or

(c) *Other Defaults.* Holdings, the Borrower or any Restricted Subsidiary fails to perform or observe (i) any covenant or agreement contained in Section 6.02(f) of this Agreement and such default shall continue unremedied for a period of at least five (5) Business Days after receipt of written notice by the Borrower from the Administrative Agent or the Required Lenders, (ii) any covenant or agreement contained in Section 6.17, Section 6.18 or Section 6.19 of this Agreement or Section 3.03(g) of the Security Agreement and such default shall continue unremedied for a period of at least fifteen (15) Business Days after receipt of written notice by the Borrower from the Administrative Agent or the Required Lenders or (iii) any other covenant or agreement (not specified in Section 8.01(a), (b), (c)(i) or (c)(ii) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

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

(e) *Cross-Default.* Any Loan Party or any Restricted Subsidiary (A) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount of not less than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any default thereunder by any Loan Party), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that this clause (e)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder; *provided, further*, that such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any Material Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment

continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismitted or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) *Attachment.* Any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Borrower and the Restricted Subsidiaries, taken as a whole, and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) *Judgments.* There is entered against any Loan Party or any Restricted Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *Invalidity of Loan Documents.* Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document or the validity or priority of a Lien as required by the Collateral Documents on a material portion of the Collateral; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Loan Document; or

(j) *Change of Control.* There occurs any Change of Control; or

(k) *Collateral Documents.* Any Collateral Document after delivery thereof pursuant to Section 4.01, 6.11 or 6.13 shall for any reason (other than pursuant to the terms thereof including as a result of a transaction not prohibited under this Agreement) cease to create a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, (i) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file Uniform Commercial Code continuation statements and (ii) except as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

(l) *ERISA.* (i) An ERISA Event occurs which has resulted or could reasonably be expected to result in liability of a Loan Party or a Restricted Subsidiary in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect, or (ii) a Loan Party, any Restricted Subsidiary or any ERISA Affiliate fails to pay when due, after the expiration of

any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect.

Section 8.02 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

(i) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(iii) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(iv) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States or any Debtor Relief Laws, the obligation of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

Section 8.03 Application of Funds.

Subject to the Term Loan Intercreditor Agreement, after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs

payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and L/C Borrowings, and any fees, premiums and scheduled periodic payments due under ABL Pari Passu Treasury Services Agreements or ABL Pari Passu Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Third* payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings (including to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit), and any breakage, termination or other payments under ABL Pari Passu Treasury Services Agreements or ABL Pari Passu Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Fourth* held by them;

Fifth, to any fees, premiums and scheduled periodic payments due under ABL Last-Out Treasury Services Agreements or ABL Last-Out Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Fifth*,

Sixth, to any breakage, termination or other payments under ABL Last-Out Treasury Services Agreements or ABL Last-Out Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Sixth*,

Seventh, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause *Fifth* above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above and, if no Obligations remain outstanding, to the Borrower as applicable.

Section 8.04 Borrower's Right to Cure.

Notwithstanding anything to the contrary contained in Section 8.01 or Section 8.02:

(a) For the purpose of determining whether an Event of Default under Section 7.11 has occurred, the Borrower may on one or more occasions designate any portion of the net cash proceeds from a sale or issuance of Qualified Equity Interests of Holdings or any cash contribution to the common capital of the Borrower (the "**Cure Amount**") as an increase to Consolidated EBITDA for the applicable fiscal quarter; *provided* that such amounts to be

designated (i) are actually received by the Borrower after the first day of such applicable fiscal quarter and on or prior to the tenth (10th) Business Day after the date on which financial statements are required to be delivered with respect to such applicable fiscal quarter (the “**Cure Expiration Date**”), (ii) do not exceed the aggregate amount necessary to cure any Event of Default under Section 7.11 as of such date and (iii) Borrower shall have provided notice (the “**Notice of Intent to Cure**”) to the Administrative Agent on the date such amounts are designated as a “Cure Amount” (it being understood that to the extent such notice is provided in advance of delivery of a Compliance Certificate for the applicable period, the amount of such Net Proceeds that is designated as the Cure Amount may be lower than specified in such notice to the extent that the amount necessary to cure any Event of Default under Section 7.11 is less than the full amount of such originally designated amount). The Cure Amount used to calculate Consolidated EBITDA for one fiscal quarter shall be used and included when calculating Consolidated EBITDA for each Test Period that includes such fiscal quarter.

(b) The parties hereby acknowledge that this Section 8.04 may not be relied on for purposes of calculating any financial ratios other than for determining actual compliance with Section 7.11 (and not for purposes of determining whether the Payment Condition is satisfied or for calculating any financial ratio for any other purpose under this Agreement) and shall not result in any adjustment to any amounts (including the amount of Indebtedness and shall not be included for purposes of determining pricing, mandatory prepayments and the availability or amount permitted pursuant to any covenant under Article VII) with respect to the quarter with respect to which such Cure Amount was made other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence.

(c) In furtherance of clause (a) above, (A) upon actual receipt and designation of the Cure Amount by the Borrower, the covenants under Section 7.11 shall be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with the covenants under such Section 7.11 and any Event of Default under Section 7.11 shall be deemed not to have occurred for purposes of the Loan Documents, and (B) upon receipt by the Administrative Agent of a Notice of Intent to Cure prior the Cure Expiration Date, neither the Administrative Agent nor any Lender may exercise any rights or remedies under Section 8.02 (or under any other Loan Document) on the basis of any actual or purported Event of Default under Section 7.11 until and unless the Cure Expiration Date has occurred without the Cure Amount having been received and designated.

(d) (i) In each period of four consecutive fiscal quarters, there shall be at least two (2) fiscal quarters in which no cure right set forth in this Section 8.04 is exercised and (ii) there shall be no *pro forma* reduction in Indebtedness with the Cure Amount for determining compliance with Section 7.11 for the fiscal quarter with respect to which such Cure Amount was made.

(e) There can be no more than five (5) fiscal quarters in which the cure rights set forth in this Section 8.04 are exercised during the term of the Facilities.

ARTICLE IX.
ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01 Appointment and Authority.

(a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints Citi to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and no Loan Party have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank or Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (including the second paragraph of Section 10.05), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

(c) The Administrative Agent alone shall be authorized to determine whether any Accounts or Inventory constitute Eligible Accounts or Eligible Inventory, or whether to impose or release any Reserve, and to exercise its Permitted Discretion in connection therewith, which determinations and judgments, if exercised in good faith, shall exonerate the Administrative Agent from liability to any Lender or other Person for any error in judgment.

Section 9.02 Rights as a Lender.

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

Section 9.03 Exculpatory Provisions.

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

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and
- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.
- (d) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.
- (e) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it

to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 Delegation of Duties.

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

Section 9.06 Resignation of Administrative Agent.

The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. If the Administrative Agent is a Defaulting Lender, the Borrower may remove such Defaulting Lender from such role upon fifteen (15) days' notice to the Lenders. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower at all times other than upon the occurrence and during the continuation of an Event of Default under Section 8.01(f) (which consent of the Borrower shall not be unreasonably withheld or delayed), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the

retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Citi as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (ii) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

Section 9.07 Non-Reliance on Administrative Agent and Other Lenders.

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

Section 9.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, none of the Administrative Agent, Bookrunners, Arrangers, Syndication Agents or Documentation Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

Section 9.09 Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and

unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 10.04 and 10.05) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04 and 10.05.

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

Section 9.10 Collateral and Guaranty Matters.

Each of the Lenders (including in its capacities as a potential Hedge Bank or Cash Management Bank) and the L/C Issuer irrevocably authorize the Administrative Agent,

(a) to automatically release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under ABL Secured Treasury Services Agreements and ABL Secured Hedge Agreements as to which arrangements satisfactory to the applicable Hedge Bank or Cash Management Bank, as applicable, shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made), (ii) at the time the property subject to such Lien is Disposed or to be Disposed to any Person other than a Loan Party as part of or in connection with any Disposition permitted hereunder or under any other Loan Document, (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below or (v) that constitutes Excluded Assets;

(b) to release or subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(u) to the extent required by the holder of, or pursuant to the terms of any agreement governing, the obligations secured by such Liens; and

(c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Restricted Subsidiary or becomes an Excluded Subsidiary as a result of a transaction or designation permitted hereunder; *provided* that no such release shall occur if such Guarantor continues to be a guarantor in respect of the Existing Notes, any Junior Financing or any Indebtedness incurred pursuant to Section 7.03(s) or (x).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

Section 9.11 ABL Secured Treasury Services Agreements and ABL Secured Hedge Agreements.

Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Hedge Bank or Cash Management Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under ABL Secured Treasury Services Agreements and ABL Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Hedge Bank or Cash Management Bank.

The Lenders hereby authorize the Administrative Agent to enter into any intercreditor agreement or arrangement permitted under this Agreement and any such intercreditor agreement is binding upon the Lenders.

Section 9.12 Withholding Tax Indemnity.

To the extent required by any applicable Laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within 10 days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by a Loan Party

pursuant to Section 3.01 and Section 3.04 and without limiting or expanding the obligation of the Loan Parties to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.12. The agreements in this Section 9.12 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations. For the avoidance of doubt, a "Lender" shall, for all purposes of this Section 9.12, include any L/C Issuer and any Swing Line Lender.

Section 9.13 Reports and Financial Statements.

By signing this Agreement or pursuant to Section 9.11, as applicable, each Secured Party:

(a) agrees to furnish the Administrative Agent on the first day of each month with a summary of all ABL Secured Hedge Agreements and ABL Secured Treasury Services Agreements due or to become due to such Lender;

(b) is deemed to have requested that the Administrative Agent furnish such Lender, promptly after they become available, copies of all financial statements required to be delivered by the Borrower hereunder and all commercial finance examinations and appraisals of the Collateral received by the Administrative Agent (collectively, the "**Borrower Reports**") (and the Administrative Agent agrees to furnish such Borrower Reports promptly to the Lenders, which may be furnished in accordance with Section 10.02(a)(B));

(c) expressly agrees and acknowledges that the Administrative Agent (i) does not make any representation or warranty as to the accuracy of the Borrower Reports and (ii) shall not be liable for any information contained in any Borrower Report;

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

(e) agrees to keep all Borrower Reports confidential in accordance with the provisions of Section 10.08 hereof, and not to use any Borrower Report in any other manner; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Administrative Agent and any such other Lender preparing a Borrower Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Borrower Report in connection with any Credit Extensions that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan

or Loans of the Borrower; and (ii) to pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Lender preparing a Borrower Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Administrative Agent and any such other Lender preparing a Borrower Report as the direct or indirect result of any third parties who might obtain all or part of any Borrower Report through the indemnifying Lender in violation of the terms hereof.

ARTICLE X.
MISCELLANEOUS

Section 10.01 Amendments, Etc.

Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (other than with respect to any amendment, waiver or modification contemplated in clause (g) below) (or by the Administrative Agent with the consent of the Required Lenders) and the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that, no such amendment, waiver or consent shall:

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

(b) postpone any date scheduled for, or reduce or forgive the amount of, any payment of principal or interest under Section 2.07 or 2.08 (other than pursuant to Section 2.08(b)) or postpone any date for the payment of fees hereunder without the written consent of each Lender directly affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest and it further being understood that any change to the definition of "Consolidated First Lien Net Leverage Ratio," "Consolidated Fixed Charge Coverage Ratio," "Total Leverage Ratio" or "Secured Leverage Ratio" or, in each case, in the component definitions thereof shall not constitute a reduction or forgiveness in any rate of interest;

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document (or extend the timing of payments of such fees or other amounts) without the written consent of each Lender directly affected thereby, it being understood that any change to the definition of "Consolidated First Lien Net Leverage Ratio," "Consolidated Fixed Charge Coverage Ratio," "Total Leverage Ratio" or "Secured Leverage Ratio" or, in each case, in the component definitions thereof shall not constitute a reduction in any rate of interest; *provided* that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 10.01 or the definition of “Supermajority Lenders,” “Required Lenders,” “Required Facility Lenders,” “Required Class Lenders” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents or Section 8.03, without the written consent of each Lender directly affected thereby (it being understood that each Lender shall be directly and adversely affected by a change to the “Required Lenders,” “Supermajority Lenders,” or “Pro Rata Share” definitions);

(e) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the aggregate value of the Guarantees, without the written consent of each Lender;

(g) (1) waive any condition set forth in Section 4.02 as to any Credit Extension under one or more Revolving Credit Facilities or (2) amend, waive or otherwise modify any term or provision which directly affects Lenders under one or more Revolving Credit Facilities and does not directly affect Lenders under any other Facility, in each case, without the written consent of the Required Facility Lenders under such applicable Revolving Credit Facility or Facilities (and in the case of multiple Facilities which are affected, such Required Facility Lenders shall consent together as one Facility); *provided, however*, that the waivers described in this clause (g) shall not require the consent of any Lenders other than the Required Facility Lenders under such Facility or Facilities;

(h) without the prior written consent of the Supermajority Lenders, change the definition of the terms “Excess Availability” or “Borrowing Base” or any component definition used therein (including, without limitation, the definitions of “Eligible Account” and “Eligible Inventory”) if, as a result thereof, the amounts available to be borrowed by the Borrower would be increased; *provided* that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves or to add Accounts and Inventory acquired in a Permitted Acquisition to the Borrowing Base as provided herein; or

(i) without the prior written consent of the Supermajority Lenders, increase the percentages set forth in the term “Borrowing Base” or add any new classes of eligible assets thereto;

and *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer in addition to the Lenders required above, affect the rights or duties of an L/C Issuer under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by a Swing Line Lender in addition to the Lenders required above, affect the rights or duties of such Swing Line Lender under this Agreement; *provided, however*, that this Agreement may be amended to adjust the borrowing mechanics related to Swing Line Loans with only the written consent of the Administrative Agent, the applicable Swing Line Lenders and the Borrower so long as the obligations of the Revolving Credit Lenders and, if applicable, the other Swing Line Lenders are not affected thereby; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the

Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and (iv) Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms materially and adversely affects any Defaulting Lender to a greater extent than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding the foregoing, no Lender consent is required to effect any amendment or supplement to the Term Loan Intercreditor Agreement or other intercreditor agreement or arrangement permitted under this Agreement that is for the purpose of adding the holders of Permitted First Priority Refinancing Debt (as defined in the Term Loan Credit Agreement as in effect on the Closing Date), or Permitted Junior Priority Refinancing Debt (as defined in the Term Loan Credit Agreement as in effect on the Closing Date), as expressly contemplated by the terms of such Term Loan Intercreditor Agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders); *provided, further*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Revolving Credit Loans, Swing Line Loans and L/C Obligations and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

Notwithstanding anything to the contrary contained in this Section 10.01, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel or (ii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

Section 10.02 Notices and Other Communications; Facsimile Copies.

(a) Notices; Effectiveness; Electronic Communications.

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

(i) if to the Borrower, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

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

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (B) below shall be effective as provided in such subsection (B).

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

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(b) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Loan Parties, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Loan Parties, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(c) Change of Address, Etc. Each of the Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, 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 Borrower Materials 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.

(d) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies.

No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other

right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Attorney Costs and Expenses.

The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent, the Syndication Agents, the Arrangers and the Bookrunners for all reasonable out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of Cahill Gordon & Reindel LLP (and any other counsel retained with the Borrower's consent (such consent not to be unreasonably withheld or delayed)) and, if necessary, one local and foreign counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for the Administrative Agent and the Lenders taken as a whole and (b) from and after the Closing Date, to pay or reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective Attorney Costs, which shall be limited to Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) days following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail; *provided* that, with respect to the Closing Date, all amounts due under this Section 10.04 shall be paid on the Closing Date solely to the extent invoiced to the Borrower within three (3) Business Days of the Closing Date (or such shorter period as the Borrower may agree). If any Loan Party fails to pay when due

any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its discretion. For the avoidance of doubt, this Section 10.04 shall not apply to Taxes, except any Taxes that represent costs and expenses arising from any non-Tax claim.

Section 10.05 Indemnification by the Borrower.

The Borrower shall indemnify and hold harmless each Agent, Agent-Related Person, Lender, Arranger and Bookrunner and their Affiliates, and their respective officers, directors, employees, partners, agents, counsel, advisors and other representatives of the foregoing (collectively the “**Indemnitees**”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including reasonable Attorney Costs of one counsel for all Indemnitees and, if necessary, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for such affected Indemnitee)) of any such Indemnitee of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom including any refusal by an L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, or (c) any actual or alleged presence or Release of Hazardous Materials at, on, under or from any property or facility currently or formerly owned, leased or operated by the Loan Parties or any Subsidiary, or any Environmental Liability of the Loan Parties or any Subsidiary, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) (a “**Proceeding**”) and regardless of whether any Indemnitee is a party thereto or whether or not such Proceeding is brought by the Borrower or any other person and, in each case, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee (all of the foregoing, collectively, the “**Indemnified Liabilities**”); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any of its controlled Affiliates or controlling Persons or any of the officers, directors, employees, agents, advisors or members of any of the foregoing, in each case who are involved in or aware of the Transaction (as determined by a court of competent jurisdiction in a final and non-appealable decision), (y) material breach of the Loan Documents by such Indemnitee or one of its Affiliates, as determined by a final non-appealable judgment of a court of competent jurisdiction or (z) disputes solely between and among such Indemnitees to the extent such disputes do not arise from any act or omission of the Borrower or any of its Affiliates (other than with respect to a claim against an Indemnitee acting in its capacity as an Agent or Arranger or similar role under the Loan Documents unless such claim arose from the gross negligence, bad faith or willful misconduct of such Indemnitee). No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, nor shall any Indemnitee, Loan Party or any Subsidiary have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in

connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party and for any out-of-pocket expenses); it being agreed that this sentence shall not limit the indemnification obligations of Holdings or any Subsidiary. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) days after written demand therefor (together with backup documentation supporting such reimbursement request); *provided, however*, that such Indemnitee shall promptly refund such amount to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification rights with respect to such payment pursuant to the express terms of this Section 10.05. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. For the avoidance of doubt, this Section 10.05 shall not apply to Taxes, except any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-Tax claims.

To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under this Section 10.05 or Section 10.04 to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this paragraph are subject to the provisions of Section 2.12(e).

Section 10.06 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (except as permitted by Section 7.04) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Assignee pursuant to an assignment made in accordance with the provisions of Section 10.07(b) (such an assignee, an “**Eligible Assignee**”), (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(g) or (iv) to an SPC in accordance with the provisions of Section 10.07(h) (and any other attempted assignment or transfer by any party hereto shall be null and void); *provided, however,* that notwithstanding the foregoing, no Lender may assign or transfer by participation any of its rights or obligations hereunder to (i) any Person that is a Defaulting Lender, (ii) a natural Person or (iii) to Holdings, the Borrower or any of their respective Subsidiaries. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (“**Assignees**”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 10.07(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower, *provided* that no consent of the Borrower shall be required for (i) an assignment related to Revolving Credit Commitments or Revolving Credit Exposure to a Revolving Credit Lender or (ii) if an Event of Default under Section 8.01(a) or, solely with respect to the Borrower, Section 8.01(f) has occurred and is continuing, any Assignee;

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment from an Agent to its Affiliates;

(C) each L/C Issuer at the time of such assignment; *provided* that no consent of the L/C Issuers shall be required for any assignment not related to Revolving Credit Commitments or Revolving Credit Exposure or any assignment to an Agent or an Affiliate of an Agent; and

(D) the Swing Line Lenders; *provided* that no consent of a Swing Line Lender shall be required for any assignment not related to Revolving Credit Commitments or Revolving Credit Exposure or any assignment to an Agent or an Affiliate of an Agent.

Notwithstanding the foregoing or anything to the contrary set forth herein, to the extent any Lender is required to assign any portion of its Commitments, Loans and other rights, duties and obligations hereunder in order to comply with applicable Laws, such assignment may be made by such Lender without the consent of the Borrower, the Administrative Agent, any L/C Issuer, any Swing Line Lender or any other party hereto so long as such Lender complies with the requirements of Section 10.07(b)(ii).

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than an amount of \$5,000,000 and shall be in increments of an amount of \$5,000,000 in excess thereof unless each of the Borrower and the Administrative Agent otherwise consents; *provided* that such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; *provided* that only one such fee shall be payable in the event of simultaneous assignments to or from two or more Approved Funds; and

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

This paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption, (1) the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (2) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a

Lender of rights or obligations under this Agreement that does not comply with this clause (c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(e).

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it, and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, L/C Obligations (specifying the Unreimbursed Amounts), L/C Borrowings and the amounts due under Section 2.03, owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender (but in the case of any Lender, with respect to its own interest only), at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(d) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(e) Any Lender may at any time, sell participations to any Person (other than a natural person or a Defaulting Lender) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a) through (f) of the first proviso to Section 10.01 that requires the affirmative vote of such Lender. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations of such Sections) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(c). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and related interest amounts) of each participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The portion of any Participant Register relating to any Participant or SPC requesting payment from the Borrower or seeking to exercise its rights under Section 10.09 shall only be available for inspection by the Borrower upon reasonable request to the extent that such disclosure is necessary in connection with a Tax audit to establish that such commitment, loan,

letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(f) A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to a greater payment results from a change in any Law after the sale of the participation takes place.

(g) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof, shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) an SPC shall be entitled to the benefit of Sections 3.01, 3.04 and 3.05 (subject to the requirements and the limitations of such sections), but neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement except to the extent that the increase or change results from a change in any Law after the grant to such SPC takes place, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be

entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) Notwithstanding anything to the contrary contained herein, any L/C Issuer or Swing Line Lender may, upon thirty (30) days' notice to the Borrower and the Lenders, resign as an L/C Issuer or Swing Line Lender, respectively; *provided* that on or prior to the expiration of such 30-day period with respect to such resignation, the relevant L/C Issuer or Swing Line Lender shall have identified a successor L/C Issuer or Swing Line Lender reasonably acceptable to the Borrower willing to accept its appointment as successor L/C Issuer or Swing Line Lender, as applicable. In the event of any such resignation of an L/C Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor L/C Issuer or Swing Line Lender hereunder; *provided* that no failure by the Borrower to appoint any such successor shall affect the resignation of the relevant L/C Issuer or the Swing Line Lender, as the case may be, except as expressly provided above. If an L/C Issuer resigns as an L/C Issuer, it shall retain all the rights and obligations of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If the Swing Line Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans, Eurocurrency Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c).

(k) [Reserved].

(l) [Reserved].

Section 10.08 Confidentiality.

Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' managers, administrators, directors, officers, employees, trustees, partners, investors, investment advisors and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority or self regulatory authority having or asserting jurisdiction over such Person (including any Governmental Authority regulating any Lender or its Affiliates), *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority) unless such notification is prohibited by law, rule or regulation; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority) unless such notification is prohibited by law, rule or regulation; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any pledgee referred to in Section 10.07(g), direct or indirect contractual counterparty to a Swap Contract, Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in any of its rights or obligations under this Agreement; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available

other than as a result of a breach of this Section 10.08 or becomes available to the Administrative Agent, any Arranger, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than a Loan Party or its related parties (so long as such source is not known to the Administrative Agent, such Arranger, such Lender, the L/C Issuer or any of their respective Affiliates to be bound by confidentiality obligations to any Loan Party); (h) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to Loan Parties and their Subsidiaries received by it from such Lender); or (i) in connection with the exercise of any remedies hereunder, under any other Loan Document or the enforcement of its rights hereunder or thereunder. For the purposes of this Section 10.08, "**Information**" means all information received from the Loan Parties relating to any Loan Party, its Affiliates or its Affiliates' directors, officers, employees, trustees, investment advisors or agents, relating to Holdings, the Borrower or any of its Subsidiaries or its business, other than any such information that is publicly available to any Agent, any L/C Issuer or any Lender prior to disclosure by any Loan Party other than as a result of a breach of this Section 10.08; *provided* that all information received after the Closing Date from Holdings, the Borrower or any of its Subsidiaries shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential.

Section 10.09 Setoff.

In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Administrative Agent, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time, without prior notice to the Borrower, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party and each of its Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates or the Administrative Agent to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations owing to such Lender and its Affiliates or the Administrative Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuers, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent and each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent and such Lender may have at Law.

Section 10.10 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.11 Counterparts.

This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier be confirmed by a manually signed original thereof; *provided* that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier.

Section 10.12 Integration; Termination.

This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 10.13 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Section 10.14 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or

unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions; *provided*, that, the Lenders shall charge no fee in connection with any such amendment. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.14, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.15 GOVERNING LAW.

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

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY (BOROUGH OF MANHATTAN) OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND AGREES THAT IT WILL NOT COMMENCE OR SUPPORT ANY SUCH ACTION OR PROCEEDING IN ANOTHER JURISDICTION. EACH LOAN PARTY, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN TELECOPIER) IN SECTION 10.02. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.16 WAIVER OF RIGHT TO TRIAL BY JURY.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF

ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.17 Binding Effect.

This Agreement shall become effective when it shall have been executed by the Loan Parties and the Administrative Agent shall have been notified by each Lender, the Swing Line Lenders and L/C Issuer that each such Lender, Swing Line Lender and L/C Issuer has executed it and thereafter shall be binding upon and inure to the benefit of the Loan Parties, each Agent and each Lender and their respective successors and assigns, in each case in accordance with Section 10.07 (if applicable) and except that no Loan Party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders except as permitted by Section 7.04.

Section 10.18 USA Patriot Act.

Each Lender that is subject to the USA Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name, address and tax identification number of such Loan Party and other information regarding such Loan Party that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the USA Patriot Act. This notice is given in accordance with the requirements of the USA Patriot Act and is effective as to the Lenders and the Administrative Agent.

Section 10.19 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the other Arrangers are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent, the other Arrangers and the Lenders, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, each other Arranger and each Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for each Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any other Arranger nor any Lender has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the other Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent nor any other Arranger nor any Lender has any obligation to disclose any of such interests to the Loan Parties or any of

their respective Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the other Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.20 Term Loan Intercreditor Agreement.

The Administrative Agent is authorized to enter into the Term Loan Intercreditor Agreement, and each of the parties hereto acknowledges that it has received a copy of the Term Loan Intercreditor Agreement and that the Term Loan Intercreditor Agreement is binding upon it. Each Lender and L/C Issuer hereunder (on behalf of itself and any Secured Parties that may be its Affiliate): (a) hereby consents to the subordination of Liens on the terms set forth in the Term Loan Intercreditor Agreement, (b) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Term Loan Intercreditor Agreement and (c) hereby authorizes and instructs the Administrative Agent to enter into the Term Loan Intercreditor Agreement and any amendments or supplements expressly contemplated thereby as the ABL Agent (as defined in the Term Loan Intercreditor Agreement), on behalf of such Lender and L/C Issuer. In the event of any conflict between the terms of this Agreement and the terms of the Term Loan Intercreditor Agreement, the terms of the Term Loan Intercreditor Agreement shall control.

ARTICLE XI.
GUARANTEE

Section 11.01 The Guarantee.

Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety to each Secured Party and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of (i) the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws) on the Loans made by the Lenders to, and the Notes held by each Lender of, the Borrower (other than such Guarantor), and all other Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document or any ABL Secured Hedge Agreement or any ABL Secured Treasury Services Agreement, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the “**Guaranteed Obligations**”). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 11.02 Obligations Unconditional.

The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower under this Agreement, the Notes, if any, or any other agreement or

instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or except as permitted pursuant to Section 11.09, any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, an L/C Issuer or any Secured Party or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor pursuant to Section 11.09.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, invalidity or enforceability of Guaranteed Obligations, amendments or waivers of any Guaranteed Obligations, non-perfection of any Collateral and any other circumstance that might constitute a defense of the Borrower or the Guarantors, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against the Borrower or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Secured Parties, and their respective

successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

Section 11.03 Reinstatement.

The obligations of the Guarantors under this Article XI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 11.04 Subrogation; Subordination.

Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party to any Person that is not a Loan Party permitted pursuant to Section 7.03(b)(ii) or 7.03(d) shall be subordinated to such Loan Party's Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness.

Section 11.05 Remedies.

The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.02) for purposes of Section 11.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01.

Section 11.06 Instrument for the Payment of Money.

Each Guarantor hereby acknowledges that the guarantee in this Article XI constitutes an instrument for the payment of money, and consents and agrees that any Secured Party or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 11.07 Continuing Guarantee.

The guarantee in this Article XI is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 11.08 General Limitation on Guarantee Obligations.

In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Loan Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.10) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 11.09 Release of Guarantors.

If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or property of any Subsidiary Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party or (ii) any Subsidiary Guarantor becomes an Excluded Subsidiary (any such Subsidiary Guarantor, and any Subsidiary Guarantor referred to in clause (i), a “**Transferred Guarantor**”), such Transferred Guarantor shall, upon the consummation of such sale or transfer or other transaction, be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Administrative Agent pursuant to the Collateral Documents shall be automatically released, and, so long as the Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, the Administrative Agent shall take such actions as are necessary to effect each release described in this Section 11.09 in accordance with the relevant provisions of the Collateral Documents; *provided*, that no Guarantor shall be released as provided in this paragraph if such Guarantor continues to be a guarantor in respect of the Senior Notes, any Indebtedness incurred pursuant to Section 7.03(s) or (x), or any Permitted Refinancing of any of the foregoing.

When all Commitments hereunder have terminated (other than (A) contingent indemnification obligations, (B) obligations and liabilities under ABL Secured Hedge Agreements as to which arrangements satisfactory to the applicable Hedge Bank shall have been made and (C) obligations and liabilities under ABL Secured Treasury Services Agreements as to which arrangements satisfactory to the applicable Cash Management Bank shall have been made), and all Loans or other Obligation hereunder which are accrued and payable have been paid or satisfied, and no Letter of Credit remains outstanding (except any Letter of Credit the Outstanding Amount of which the Obligations related thereto has been Cash Collateralized or for which a backstop letter of credit reasonably satisfactory to the applicable L/C Issuer has been put in place), this Agreement and the Guarantees made herein shall terminate with respect to all Obligations, except with respect to Obligations that expressly survive such repayment pursuant to the terms of this Agreement.

Section 11.10 Right of Contribution.

Each Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Subsidiary Guarantor shall be entitled

to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.04. The provisions of this Section 11.10 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Administrative Agent, the L/C Issuer, the Swing Line Lender and the Secured Parties, and each Subsidiary Guarantor shall remain liable to the Administrative Agent, the L/C Issuer, the Swing Line Lender and the Secured Parties for the full amount guaranteed by such Subsidiary Guarantor hereunder.

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

PRESTIGE BRANDS HOLDINGS, INC., as Holdings and a Guarantor

By: /s/ Ron Lombardi

Name: Ronald M. Lombardi

Title: Chief Financial Officer

PRESTIGE BRANDS, INC., as Borrower

By: /s/ Ron Lombardi

Name: Ronald M. Lombardi

Title: Chief Financial Officer

BLACKSMITH BRANDS, INC.
MEDTECH HOLDINGS, INC.
MEDTECH PRODUCTS INC.
PRESTIGE BRANDS HOLDINGS, INC.
PRESTIGE BRANDS INTERNATIONAL, INC.
PRESTIGE PERSONAL CARE HOLDINGS, INC.
PRESTIGE PERSONAL CARE, INC.
PRESTIGE SERVICES CORP.
THE CUTEX COMPANY
THE DENOREX COMPANY
THE SPIC AND SPAN COMPANY,
as Subsidiary Guarantors

By: /s/ Ron Lombardi

Name: Ronald M. Lombardi

Title: Chief Financial Officer

CITIBANK, N.A., as Administrative Agent, L/C Issuer, Swing Line Lender and as a Lender

By: /s/ Michael Smolow

Name: Michael Smolow

Title: Vice President

**MORGAN STANLEY BANK, N.A., as a
Lender**

By: /s/ Ramin Pourfar

Name: Ramin Pourfar

Title: Authorized Signatory

**DEUTSCHE BANK TRUST COMPANY
AMERICAS, as a Lender**

By: /s/ Dusan Lazarov

Name: Dusan Lazarov

Title: Director

By: /s/ Dusan Lazarov

Name: Dusan Lazarov

Title: Director

**ROYAL BANK OF CANADA, as a
Lender**

By: /s/ Daniel Giola

Name: Daniel Giola

Title: Authorized Signatory

Executive Employment Agreement

1. Employment. Prestige Brands Holdings, Inc. ("Employer") agrees to employ Samuel Cowley ("Executive") and Executive accepts such employment for the period beginning as of February 29, 2012 and ending upon his termination pursuant to Section 1(c) hereof (the "Employment Period"), subject only to the approval of the Prestige Brands Holdings, Inc. Board of Directors (the "Board").

(a) Position and Duties.

(i) During the Employment Period, Executive shall serve as General Counsel and Vice President of Business Development and shall have the normal duties, responsibilities and authority implied by such positions, subject to the power of the Chief Executive Officer of Employer and the Board to expand or limit such duties, responsibilities and authority and to override such actions.

(ii) Executive shall report to the Chief Executive Officer of Employer, and Executive shall devote his best efforts and his full business time and attention to the business and affairs of Employer and its Subsidiaries (as defined below).

(b) Salary, Bonus and Benefits. During the Employment Period, Employer will pay Executive a base salary of \$335,000 per annum (the "Annual Base Salary"), paid twice monthly, in accordance with Employer's normal payroll cycle and procedures. In addition, in fiscal years 2013 and beyond, Executive shall be eligible for and participate in the Annual Incentive Compensation Plan (the "Annual Bonus") under which Executive shall be eligible for an annual Target Bonus payment of 50% of Annual Base Salary with a maximum of 100% potential payout, subject to the terms and conditions of the applicable Annual Incentive Compensation Plan and the discretion of the Board. During fiscal year 2013 only, Executive shall receive a "Guaranteed Bonus" equal to a minimum of \$167,500 payable at year-end, with other bonuses payable to senior management; provided, however, that Executive shall be eligible to receive a higher bonus payout based on Employer's performance for the fiscal year, to the extent applicable. Executive shall be eligible to participate in the Long-Term Equity Incentive Plan of Employer (the "Plan") and receive grants thereunder at the same time as grants are made to the rest of senior management, beginning with grants issued in May 2012; provided, however, that the Board reserves its discretion to not make an equity grant in any fiscal year. Any equity grant provided under the Plan shall have at the time of grant a value equal to Executive's Annual Base Salary then in effect; provided, however, at the discretion of the Board, such grant may be modified to have a value equal to no less than 80% or no greater than 120% of Executive's Annual Base Salary then in effect at the time of grant. In addition, any equity grant provided under the Plan shall automatically vest upon a Change in Control (as defined in the Plan). During the Employment Period, Executive will be entitled to such other benefits approved by the Board and made available to the senior management of Employer and its Subsidiaries, which shall include vacation time (four weeks

per year), flexible spending account, 401(k) Plan (currently 65% match of up to 6% of salary, subject to IRS cap and periodic potential adjustment by the Board), expense reimbursement in accordance with the policies and procedures of Employer, as well as medical, dental, vision, life, long term care and disability insurance (collectively, such insurance plans, the "Welfare Plans"). The Board, on a basis consistent with past practice, shall review the Annual Base Salary of Executive and may increase the Annual Base Salary by such amount as the Board, in its sole discretion, shall deem appropriate. The term "Annual Base Salary," as used in this Agreement shall refer to the Annual Base Salary as it may be so increased.

(c) Termination. The Employment Period will continue until (i) Executive's death, Disability or resignation from employment with Employer and its Subsidiaries or (ii) Employer and its Subsidiaries decide to terminate Executive's employment with or without Cause (as defined below). If (A) Executive's employment is terminated without Cause pursuant to clause (ii) above or (B) Executive resigns from employment with Employer and its Subsidiaries for Good Reason, then, subject to Executive's execution and delivery of a Release in form and substance as set forth below, starting on the sixtieth (60th) day following Executive's termination of employment (or such later date as may be required by Section 4(k)(i) hereof), Employer shall pay to Executive, in equal installments ratably over twelve (12) months (the "Severance Period") in accordance with Employer's normal payroll cycle and procedures, an aggregate amount (the "Severance") equal to (I) his Annual Base Salary (prior to any material diminution that constitutes Good Reason for Employee's resignation), plus (II) an amount equal to the average Annual Bonus paid or payable to Executive by Employer for the last three completed fiscal years prior to the date of termination (or if Executive has not completed three (3) fiscal years prior to the date of termination, then the average Annual Bonus paid or payable to Executive by Employer will be determined based on the actual number of completed fiscal years prior to the date of termination); provided, however, that fiscal year 2012 (for which no bonus is payable) will not be included in any such calculations for Executive. In calculating the average Annual Bonus for purposes of the immediately preceding sentence, in the event Executive's employment is terminated pursuant to this Section 1(c) during fiscal years 2013 through 2015, Executive's Annual Bonus payable hereunder shall be calculated using the average of the fiscal year 2013 Annual Bonus payment payable to Executive or the Guaranteed Bonus (if no higher bonus payout is otherwise payable to Executive for fiscal year 2013) and any other Annual Bonus payments paid for full fiscal years completed. In addition, if Executive is entitled on the date of termination to coverage under the Welfare Plans, such coverage shall continue for Executive and Executive's covered dependents for a period ending on the first anniversary of the date of termination at the active employee cost payable by Executive with respect to those costs paid by Executive prior to the date of termination; provided, that this coverage will not count towards the depletion of any continued health care coverage rights that Executive and Executive's dependents may have pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), and such rights to continued health care coverage under COBRA shall remain available to Executive and Executive's dependents after the Severance Period; provided further, that Executive's or Executive's covered dependents' rights to continued health care coverage pursuant to this Section 1(c) shall terminate at the time Executive or Executive's covered dependents become covered, as

described in COBRA, under another group health plan, and shall also terminate as of the date Employer ceases to provide coverage to its senior executives generally under any such Welfare Plan. In the event a Change in Control (as defined in the Plan) occurs and Executive's employment is thereafter terminated by Employer without Cause or by Executive for Good Reason no later than March 1, 2014, then, subject to Executive's execution and delivery of a Release in form and substance as set forth above, Executive shall be entitled to receive (in lieu of the Severance that would otherwise be payable) an amount equal to two (2) times the Severance as calculated above, which shall be payable starting on the sixtieth (60th) day following Executive's termination of employment (or such later date as may be required by Section 4(k)(i) hereof) in equal installments ratably over the 12-month Severance Period, and (ii) a moving allowance of \$125,000 which shall be payable in a lump sum within 60 days after Executive's termination of employment. Notwithstanding the foregoing, (I) Executive shall not be entitled to receive any payments or benefits pursuant to this Section 1(c) unless Executive has executed and delivered to Employer a general release in form and substance satisfactory to Employer and (II) Executive shall be entitled to receive such payments and benefits only so long as Executive has not breached the provisions of Section 2 or Section 3 hereof. The release described in the foregoing sentence shall not require Executive to release any claims for Severance or benefits under the Welfare Plans as set forth in this Agreement, any vested employee benefits, workers compensation benefits covered by insurance or self-insurance, claims to indemnification to which Executive may be entitled under Employer's or its Subsidiaries' certificate(s) of incorporation, by-laws, any indemnification agreement or under any of Employer's or its Subsidiaries' directors or officers insurance policy(ies) or applicable law, or equity claims to contribution from Employer or its Subsidiaries or any other Person to which Executive is entitled as a matter of law in respect of any claim made against Executive for an alleged act or omission in Executive's official capacity and within the scope of Executive's duties as an officer, director or employee of Employer or its Subsidiaries. Not later than eighteen (18) months following the termination of Executive's employment, Employer and its Subsidiaries for which Executive has acted in the capacity of a senior manager, shall sign and deliver to Executive a release of claims that Employer and its Subsidiaries have against Executive; provided that, such release shall not release any claims that Employer and/or its Subsidiaries commenced prior to the date of the release(s), any claims relating to matters actively concealed by Executive, any claims to contribution from Executive to which Employer or its Subsidiaries are entitled as a matter of law or any claims arising out of mistaken indemnification by Employer and/or any of its Subsidiaries. Except as otherwise provided in this Section 1(c) or in Employer's employee benefit plans or as otherwise required by applicable law, Executive shall not be entitled to any other salary, compensation or benefits after termination of Executive's employment with Employer.

(d) Relocation Expense. Executive will be paid \$125,000 in a lump sum as a moving allowance and in lieu of any and all other moving expense reimbursement. In addition, Executive will be reimbursed for up to three months of reasonable temporary or interim housing. The moving allowance shall be subject to 100% recoupment by Employer in the event of a termination of employment by Executive, other than for Good Reason, during the first twelve (12) months of employment.

2. Confidential Information.

(a) Obligation to Maintain Confidentiality. Executive acknowledges that the information, observations and data (including trade secrets) obtained by him during the course of his performance under this Agreement concerning the business or affairs of Employer, its Subsidiaries and Affiliates (“Confidential Information”) are the property of Employer, its Subsidiaries and Affiliates, as applicable, including information concerning acquisition opportunities in or reasonably related to Employer's, its Subsidiaries' and/or Affiliates' business or industry of which Executive becomes aware during the Employment Period. Therefore, Executive agrees that he will not disclose to any unauthorized Person or use for his own account (for his commercial advantage or otherwise) any Confidential Information without the Board's written consent, unless and to the extent that the Confidential Information, (i) becomes generally known to and available for use by the public other than as a result of Executive's acts or omissions to act, (ii) was known to Executive prior to Executive's employment with Employer or any of its Subsidiaries or Affiliates or (iii) is required to be disclosed pursuant to any applicable law, court order or other governmental decree. Executive shall deliver to Employer on the date of termination, or at any other time Employer may request, all memoranda, notes, plans, records, reports, computer tapes, printouts and software and other documents and data (and copies thereof) relating to the Confidential Information, Work Product (as defined below) or the business of Employer, its Subsidiaries and Affiliates (including, without limitation, all acquisition prospects, lists and contact information) which he may then possess or have under his control.

(b) Ownership of Property. Executive acknowledges that all discoveries, concepts, ideas, inventions, innovations, improvements, developments, methods, processes, programs, designs, analyses, drawings, reports, patent applications, copyrightable work and mask work (whether or not including any Confidential Information) and all registrations or applications related thereto, all other proprietary information and all similar or related information (whether or not patentable) that relate to Employer's, its Subsidiaries' and/or Affiliates' actual or anticipated business, research and development, or existing or future products or services and that are conceived, developed, contributed to, made, or reduced to practice by Executive (either solely or jointly with others) while employed by Employer, its Subsidiaries and/or Affiliates (including any of the foregoing that constitutes any proprietary information or records) (“Work Product”) belong to Employer or such Subsidiary or Affiliate and Executive hereby assigns, and agrees to assign, all of the above Work Product to Employer or to such Subsidiary or Affiliate. Any copyrightable work prepared in whole or in part by Executive in the course of his work for any of the foregoing entities shall be deemed a “work made for hire” under the copyright laws, and Employer or such Subsidiary or Affiliate shall own all rights therein. To the extent that any such copyrightable work is not a “work made for hire,” Executive hereby assigns and agrees to assign to Employer or such Subsidiary or Affiliate all right, title, and interest, including without limitation, copyright in and to such copyrightable work. Executive shall promptly disclose such Work Product and copyrightable work to the Board and perform all actions reasonably requested by the Board (whether during or after the Employment Period) to establish and confirm

Employer's or such Subsidiary's or Affiliate's ownership (including, without limitation, assignments, consents, powers of attorney, and other instruments).

(c) Third Party Information. Executive understands that Employer, its Subsidiaries and Affiliates will receive from third parties confidential or proprietary information ("Third Party Information"), subject to a duty on Employer's, its Subsidiaries' and Affiliates' part to maintain the confidentiality of such information and to use it only for certain limited purposes. During the Employment Period and thereafter, and without in any way limiting the provisions of Section 2(a) above, Executive will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than personnel and consultants of Employer, its Subsidiaries and Affiliates who need to know such information in connection with their work for Employer or any of its Subsidiaries and Affiliates) or use, except in connection with his work for Employer or any of its Subsidiaries and Affiliates, Third Party Information unless expressly authorized by a member of the Board (other than himself if Executive is on the Board) in writing.

(d) Use of Information of Prior Employers. During the Employment Period and thereafter, Executive will not improperly use or disclose any confidential information or trade secrets, if any, of any former employers or any other Person to whom Executive has an obligation of confidentiality, and will not bring onto the premises of Employer or any of its Subsidiaries or Affiliates any unpublished documents or any property belonging to any former employer or any other Person to whom Executive has an obligation of confidentiality unless consented to in writing by the former employer or Person. Executive will use in the performance of his duties only information which is (i) generally known and used by persons with training and experience comparable to Executive's and which is (x) common knowledge in the industry or (y) otherwise legally in the public domain, (ii) otherwise provided or developed by Employer or any of its Subsidiaries or Affiliates or (iii) in the case of materials, property or information belonging to any former employer or other Person to whom Executive has an obligation of confidentiality, approved for such use in writing by such former employer or Person.

3. Non-competition and No Solicitation. Executive acknowledges that (i) the course of his employment with Employer he will become familiar with Employer's, its Subsidiaries' and Affiliates' trade secrets and with other confidential information concerning Employer, its Subsidiaries and Affiliates; and (ii) his services will be of special, unique and extraordinary value to Employer and such Subsidiaries. Therefore, Executive agrees that:

(a) Non-competition. During the Employment Period and also during the period commencing on the date of termination of the Employment Period and ending on the first anniversary of the date of termination (the "Severance Period"), he shall not without the express written consent of Employer, anywhere in the United States, directly or indirectly, own, manage, control, participate in, consult with, render services for, or in any manner engage in any business (i) which competes with (a) OTC wart or skin tag treatment products (including, without limitation, salicylic acid or cryogen-based products), (b) dental devices for treatment or management of bruxism, (c) OTC sore throat treatment products (including,

without limitation, liquids, lozenges and strips), (d) inter-proximal devices, (e) powdered and liquid cleansers, (f) pediatric OTC medicinal and non-medicinal products, (g) OTC eye care products, (h) denture cleansers or adhesives, or (i) any other business acquired by Employer and its Subsidiaries after the date hereof which represents 5% or more of the consolidated revenues or EBITDA of Employer and its Subsidiaries for the trailing 12 months ending on the last day of the last completed calendar month immediately preceding the date of termination of the Employment Period, or (ii) in which Employer and/or its Subsidiaries have conducted discussions or have requested and received information relating to the acquisition of such business by such Person (x) within one year prior to the date of termination and (y) during the Severance Period, if any. Nothing herein shall prohibit Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation that is publicly traded, so long as Executive has no active participation in the business of such corporation.

(b) No solicitation. During the Employment Period and also during the Severance Period, Executive shall not directly or indirectly through another entity (i) induce or attempt to induce any employee of Employer or its Subsidiaries to leave the employ of Employer or its Subsidiaries, or in any way interfere with the relationship between Employer or its Subsidiaries and any employee thereof, (ii) hire any person who was an employee of Employer or its Subsidiaries within 180 days after such person ceased to be an employee of Employer or its Subsidiaries; provided, however, that such restriction shall not apply for a particular employee if Employer or its Subsidiaries have provided written consent to such hire, which consent, in the case of any person who was not a key employee of Employer or its Subsidiaries shall not be unreasonably withheld, (iii) induce or attempt to induce any customer, supplier, licensee or other business relation of Employer or its Subsidiaries to cease doing business with Employer or its Subsidiaries or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and Employer or its Subsidiaries or (iv) directly or indirectly acquire or attempt to acquire an interest in any business relating to the business of Employer or its Subsidiaries and with which Employer or its Subsidiaries have conducted discussions or have requested and received information relating to the acquisition of such business by Employer or its Subsidiaries in the two year period immediately preceding the date of termination.

(c) Enforcement. If, at the time of enforcement of Section 2 or this Section 3, a court holds that the restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum duration, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area and that the court shall be allowed to revise the restrictions contained herein to cover the maximum duration, scope and area permitted by law. Because Executive's services are unique and because Executive has access to Confidential Information, the parties hereto agree that money damages would be an inadequate remedy for any breach of this Agreement. Therefore, in the event of a breach or threatened breach of this Agreement, Employer, its Subsidiaries or their successors or assigns may, in addition to other rights and remedies existing in their favor, apply to any court of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce, or prevent any violations of, the

provisions hereof (without posting a bond or other security).

(d) Additional Acknowledgments. Executive acknowledges that the provisions of this Section 3 are in consideration of: (i) employment with Employer, (ii) the prospective issuance of securities by Employer pursuant to the Plan and (iii) additional good and valuable consideration as set forth in this Agreement. In addition, Executive agrees and acknowledges that the restrictions contained in Section 2 and this Section 3 do not preclude Executive from earning a livelihood, nor do they unreasonably impose limitations on Executive's ability to earn a living. In addition, Executive acknowledges (i) that the business of Employer and its Subsidiaries will be conducted throughout the United States, (ii) notwithstanding the state of incorporation or principal office of Employer or any of its Subsidiaries, or any of their respective executives or employees (including Executive), it is expected that Employer and its Subsidiaries will have business activities and have valuable business relationships within its industry throughout the United States and (iii) as part of his responsibilities, Executive will be traveling throughout the United States in furtherance of Employer's and/or its Subsidiaries' business and their relationships. Executive agrees and acknowledges that the potential harm to Employer and its Subsidiaries of the non-enforcement of Section 2 and this Section 3 outweighs any potential harm to Executive of their enforcement by injunction or otherwise. Executive acknowledges that he has carefully read this Agreement and has given careful consideration to the restraints imposed upon Executive by this Agreement, and is in full accord as to their necessity for the reasonable and proper protection of confidential and proprietary information of Employer and its Subsidiaries now existing or to be developed in the future. Executive expressly acknowledges and agrees that each and every restraint imposed by this Agreement is reasonable with respect to subject matter, time period and geographical area.

4. Miscellaneous.

(a) Survival. The provisions of Sections 1(c), 2, 3 and 4 shall survive the termination of this Agreement.

(b) Entire Agreement and Merger. This Agreement sets forth the entire understanding of the parties and merges and supersedes any prior or contemporaneous agreements, whether written or oral, between the parties pertaining to the subject matter hereof.

(c) Modification. This Agreement may not be modified or terminated orally, and no modification or waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

(d) Waiver. Failure of a party to enforce one or more of the provisions of this Agreement or to require at any time performance of any of the obligations hereof shall not be construed to be a waiver of such provisions by such party nor to in any way affect the validity of this Agreement or such party's right thereafter to enforce any provision of this Agreement, nor to preclude such party from taking any other action at any time which it

would legally be entitled to take.

(e) Successors and Assigns. Neither party shall have the right to assign this Agreement, or any rights or obligations hereunder, without the consent of the other party; provided, however, that upon the sale of all or substantially all of the assets, business and goodwill of Employer to another company, or upon the merger or consolidation of Employer with another company, this Agreement shall inure to the benefit of, and be binding upon, both Executive and the company purchasing such assets, business and goodwill, or surviving such merger or consolidation, as the case may be, in the same manner and to the same extent as though such other company were Employer; and provided, further, that Employer shall have the right to assign this Agreement to any Affiliate or Subsidiary of Employer. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their legal representatives, heirs, successors and permitted assigns.

(f) Communications. All notices or other communications required or permitted hereunder will be in writing and will be deemed given or delivered when delivered personally, by registered or certified mail or by overnight courier (fare prepaid) addressed as follows:

(i) To Employer: Prestige Brands Holdings, Inc.
90 North Broadway
Irvington, New York 10533
Attention Chief Executive Officer

(ii) With a copy to: Prestige Brands Holdings, Inc.
90 North Broadway
Irvington, New York 10533
Attention: General Counsel

(iii) To the Employee Samuel Cowley
90 North Broadway
Irvington, New York 10533

or to such address as a party hereto may indicate by a notice delivered to the other party. Notice will be deemed received the same day when delivered personally, five (5) days after mailing when sent by registered or certified mail, and the next business day when delivered by overnight courier. Any party hereto may change its address to which all communications and notices may be sent by addressing notices of such change in the manner provided.

(g) Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity and enforceability of the other provisions of this Agreement and the provision held to be invalid or unenforceable shall be enforced as nearly as possible according to its original terms and intent to eliminate such invalidity or unenforceability.

(h) Governing Law. This Agreement will be governed by, construed and enforced

in accordance with the laws of the State of New York, without giving effect to its conflicts of law provisions.

(i) Arbitration.

(a) Except as provided in subsection (b) of this Section 4(i), the following provisions shall apply to disputes between Employer and Executive arising out of or related to either: (i) this Agreement (including any claim that any part of this Agreement is invalid, illegal or otherwise void or voidable), or (ii) the employment relationship that exists between Employer and Executive:

(i) The parties shall first use their reasonable best efforts to discuss and negotiate a resolution of the dispute.

(ii) If efforts to negotiate a resolution do not succeed within 5 business days after a written request for negotiation has been made, the dispute shall be resolved timely and exclusively by final and binding arbitration in New York County or Westchester County, New York pursuant to the American Arbitration Association ("AAA") National Rules for the Resolution of Employment Disputes (the "AAA Rules"). Arbitration must be demanded within ten (10) calendar days after the expiration of the five (5) day period referred to above. The arbitration opinion and award shall be final and binding on Employer and Executive and shall be enforceable by any court sitting within New York County or Westchester County, New York. Employer and Executive shall share equally all costs of arbitration excepting their own attorney's fees unless and to the extent ordered by the arbitrator(s) to pay the attorneys' fees of the prevailing party.

(iii) The parties recognize that this Section 4(i) means that certain claims will be reviewed and decided only before an impartial arbitrator or panel of arbitrators instead of before a court of law and/or a jury, but desire the many benefits of the arbitration process over court proceedings, including speed of resolution, lower costs and fees, and more flexible rules of evidence. The arbitration or arbitrators duly selected pursuant to the AAA's Rules shall have the same power and authority to order any remedy for violation of a statute, regulation, or ordinance as a court would have; and shall have the same power to order discovery as a federal district court has under the Federal Rules of Civil Procedure.

(b) The provisions of this Section 4(i) shall not apply to any action by Employer seeking to enforce its rights arising out of or related to the provisions of Sections 2 and 3 of this Agreement.

(c) This Section 4(i) is intended by Employer and Executive to be enforceable under the Federal Arbitration Act ("FAA"). Should it be determined by any court that the FAA does not apply, then this Section 4(i) shall be enforceable under the applicable arbitration statutes of the State of Delaware.

(j) No Third-Party Beneficiaries. Each of the provisions of this Agreement is

for the sole and exclusive benefit of the parties hereto and shall not be deemed for the benefit of any other person or entity.

(k) Section 409A of the Internal Revenue Code.

(i) Specified Employee Delay. Notwithstanding any provisions of this Agreement to the contrary, if Executive is considered a Specified Employee (as defined below) at termination of employment other than on account of death or Disability, under such procedures as established by Employer in accordance with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), benefit distributions, other than those that are deemed "separation pay" under the Treas. Reg. §1.409A-1(b)(9), that are made upon termination of employment may not commence earlier than six (6) months after the date of termination. Therefore, in the event this provision is applicable to Executive, any distribution which would otherwise be paid to Executive within the first six months following termination shall be accumulated and paid to Executive in a lump sum on the first day of the seventh month following termination. All subsequent distributions shall be paid in the manner specified. "Specified Employee" means a key employee (as defined in Section 416(i) of the Code without regard to paragraph 5 thereof) of Employer if any stock of Employer is publicly traded on an established securities market or otherwise.

(ii) Separation from Service. With respect to the payment of all benefits under the Agreement, including separation pay and deferred compensation, whether a "termination of employment" takes place is determined based on the facts and circumstances surrounding the termination of Executive's employment and whether Employer and Executive intended for Executive to provide significant services for Employer following such termination. A change in Executive's employment status will not be considered a termination of employment if:

(A) Executive continues to provide services as an employee of Employer at an annual rate that is twenty percent (20%) or more of the services rendered, on average, during the immediately preceding three full calendar years of employment (or, if employed less than three years, such lesser period) and the annual remuneration for such services is twenty percent (20%) or more of the average annual remuneration earned during the final three full calendar years of employment (or, if less, such lesser period), or

(B) Executive continues to provide services to Employer in a capacity other than as an employee of Employer at an annual rate that is fifty percent (50%) or more of the services rendered, on average, during the immediately preceding three full calendar years of employment (or if employed less than three years, such lesser period) and the annual remuneration for such services is fifty percent (50%) or more of the average annual remuneration earned during the final three full calendar years of employment (or if less, such lesser period).

For purposes of applying the provisions of Section 409A of the Code, a reference to Employer shall also be deemed a reference to any affiliate thereof within the

contemplation of Sections 414(b) and 414(c) of the Code. For purposes of this Agreement, the definition of “termination of employment” shall apply to all uses of such term, whether capitalized or not.

(iii) Installment Payments. Each payment of termination benefits under Section 1(c) of this Agreement, including, without limitation, each installment payment and each payment or reimbursement of premiums for continued coverage under Welfare Plans, shall be considered a separate payment, as described in Treas. Reg. Section 1.409A-2(b)(2), for purposes of Section 409A of the Code.

(iv) Timing of Release of Claims. Whenever in this Agreement a payment or benefit is conditioned on Executive’s execution of a release of claims, such release must be executed and all revocation periods shall have expired within 60 days after the date of Executive’s employment termination; failing which such payment or benefit shall be forfeited. If such payment or benefit constitutes non-exempt deferred compensation, and if such 60-day period begins in one calendar year and ends in the next calendar year, the payment or benefit shall not be made or commence before the second such calendar year, even if the release becomes irrevocable in the first such calendar year. In other words, Executive is not permitted to influence the calendar year of payment based on the timing of his signing of the release.

(v) Timing of Reimbursements and In-kind Benefits. If Executive is entitled to be paid or reimbursed for any taxable expenses under this Agreement, the amount of such expenses reimbursable in any one calendar year shall not affect the amount reimbursable in any other calendar year, and the reimbursement of an eligible expense must be made no later than December 31 of the year after the year in which the expense was incurred. No right of Executive to reimbursement of expenses under Section 1(c) shall be subject to liquidation or exchange for another benefit.

(vi) Permitted Acceleration. Employer shall have the sole authority to make any accelerated distribution permissible under Treas. Reg. Section 1.409A-3(j)(4) to Executive of deferred amounts, provided that such distribution meets the requirements of Treas. Reg. Section 1.409A-3(j)(4).

(l) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

PRESTIGE BRANDS HOLDINGS, INC.

By: /s/ Matthew M. Mannelly

Name: Matthew M. Mannelly

Title: Chief Executive Officer

By: /s/ Samuel Cowley

Name: Samuel Cowley

DEFINITIONS

“Affiliate” means, with respect to any Person, any other Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlled” and “controlling” have meanings correlative thereto.

“Cause” is defined as (i) your willful and continued failure to substantially perform your duties with Employer (other than any such failure resulting from your incapacity due to physical or mental illness) that has not been cured within 10 days after a written demand for substantial performance is delivered to you by the Board, which demand specifically identifies the manner in which the Board believes that you have not substantially performed your duties, (ii) the willful engaging by you in conduct which is demonstrably and materially injurious to Employer or its Affiliates, monetarily or otherwise, (iii) your conviction (or plea of nolo contendere) for any felony or any other crime involving dishonesty, fraud or moral turpitude, (iv) your breach of fiduciary duty to Employer or its Affiliates, (v) any violation of Employer's policies relating to compliance with applicable laws which have a material adverse effect on Employer or its Affiliates or (vi) your breach of any restrictive covenant. For purposes of clauses (i) and (ii) of this definition, no act, or failure to act, on your part shall be deemed "willful" unless done, or omitted to be done, by you not in good faith and without reasonable belief that your act, or failure to act, was in the best interest of Employer.

“Disability” means Executive: (i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months; or (ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees or directors of Employer. Medical determination of Disability may be made by either the Social Security Administration or by the provider of an accident or health plan covering employees or directors of Employer provided that the definition of “disability” applied under such disability insurance program complies with the requirements of the preceding sentence. Upon the request of the plan administrator, Executive must submit proof to the plan administrator of the Social Security Administration's or the provider's determination. For purposes of this Agreement the definition of “Disability” shall apply to all uses of such term, whether capitalized or not.

“Good Reason” means that Executive terminated his employment with Employer because, within the twelve (12) month period preceding Executive's termination, one or more of the following conditions arose and Executive notified Employer of such condition within 90 days of its occurrence and Employer did not remedy such condition within 30

days:

- (i) a material diminution in Executive's base salary as in effect on the date hereof or as the same may be increased from time to time;
- (ii) a material diminution in Executive's authority, duties, or responsibilities;
- (iii) the relocation of Employer's headquarters outside a thirty-mile radius of Irvington, New York or Employer's requiring Executive to be based at any place other than a location within a thirty-mile radius of Irvington, New York, except for reasonably required travel on Employer's business; or
- (iv) any other action or inaction that constitutes a material breach by Employer of this Agreement.

“Person” means any person or entity, whether an individual, trustee, corporation, limited liability company, partnership, trust, unincorporated organization, business association, firm, joint venture, governmental authority or similar entity.

“Subsidiary” of any specified Person shall mean any corporation fifty percent (50%) or more of the outstanding capital stock of which, or any partnership, joint venture, limited liability company or other entity fifty percent (50%) or more of the ownership interests of which, is directly or indirectly owned or controlled by such specified Person, or any such corporation, partnership, joint venture, limited liability company, or other entity which may otherwise be controlled, directly or indirectly, by such Person.

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO CERTAIN PORTIONS OF THIS AGREEMENT. CONFIDENTIAL PORTIONS HAVE BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

DATED 31 January 2012

MEDTECH PRODUCTS INC.

and

GLAXOSMITHKLINE CONSUMER HEALTHCARE L.P.

TRANSITIONAL MANUFACTURING AND SUPPLY AGREEMENT

(for the supply of certain products
by GlaxoSmithKline Consumer Healthcare L.P.
to Medtech Products Inc.)

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THIS AGREEMENT is made 31 January 2012

BETWEEN:

1. **MEDTECH PRODUCTS INC.** whose registered address is at 90 North Broadway, Irvington, New York, 10533 (registered in Delaware No. 2654109) ("**Prestige**");

AND

2. **GLAXOSMITHKLINE CONSUMER HEALTHCARE L.P.** whose registered office is at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808, United States of America (registered in Delaware with Company No. 2308674) ("**Supplier**") (together the "**Parties**", and each a "**Party**").

WHEREAS:

- (A) By an agreement dated 20 December 2011 between *inter alia* GlaxoSmithKline LLC and Prestige Brands Holdings, Inc. (the "**Sale Agreement**") GlaxoSmithKline LLC has agreed to sell, or procure the sale of, and Prestige has agreed to purchase, or procure the purchase of, and pay, or procure payment, for the Business (as defined in the Sale Agreement) as a going concern, the Business Assets (as defined in the Sale Agreement) and the Shares (as defined in the Sale Agreement).
- (B) The Sale Agreement provides for various agreements to be entered into as from Completion (as defined in the Sale Agreement), including the Transitional Manufacturing and Supply Agreement (as defined in the Sale Agreement).
- (C) This Agreement is the above-mentioned Transitional Manufacturing and Supply Agreement and sets out the terms and conditions on which Prestige has agreed to appoint the Supplier to manufacture and supply (or procure the manufacture and supply by its Affiliates of) certain products to Prestige and its Affiliates from the Manufacturing Sites (as defined below) and on which the Supplier (or its Affiliates) is willing to undertake such manufacture and supply.

WHEREBY IT IS AGREED as follows:

1. INTERPRETATION

- 1.1 In this Agreement, unless expressly specified to the contrary, the following terms shall have the following meanings.

"Affiliates" means in relation to any person, a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the first mentioned person;

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“Agreed Form Quality Agreement”	means the form of quality agreement agreed by the Parties, Part A of which is set out at Schedule 2, which will form the substantial basis for the Final Form Quality Agreement and which shall be negotiated and entered into by the Parties in respect of each Manufacturing Site pursuant to Clause 2.4;
“Agreement”	means this agreement together with all its schedules (the “Schedules”);
“[***]”	[***];
“Applicable Laws”	means all applicable statutes, laws, rules, orders, regulations and other requirements of any Governmental Entity , including the requirements of GMP, applicable to the Manufacture of the Products under this Agreement, not only in the country of Manufacture but also in the country where the Products are to be Commercialised;
“Approved Suppliers”	means the suppliers specified in the Quality Agreement, (as may be amended by agreement between by the Parties from time to time in writing) as being approved for the supply of certain Materials;
“Batch Record”	means a document that records details about the Manufacture of a batch of Product, in the form prescribed by the Quality Agreement;
“Business Day”	means a day (other than a Saturday or a Sunday) on which banks are open for business in New York;
“Certificate of Analysis”	means a document identified as such, signed and dated by a Qualified Person (or person designated by the Qualified Person to sign such document in accordance with GMP), that: <ul style="list-style-type: none"> (a) sets out the analytical test results for each specified batch of Product; and (b) certifies that such Product(s) have been Manufactured in accordance with the Specifications;
“Change Control Procedure”	means the procedure referred to in the Quality Agreement for changing the manner in which the Supplier (or its Affiliates) Manufactures Products;
“Commercialise”	means to promote, market, distribute, and/or sell a product and “Commercialisation” shall be construed accordingly;

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“Confidential Information”	means, in relation to each Party, any confidential or proprietary information of that Party or its Affiliates, including but not limited to confidential information relating to the business affairs, operations, strategy or finances of that Party or its Affiliates including but not limited to trade secrets, proprietary know-how, specifications or other information of a technical nature or information relating to the products, processes, methodologies, formulae, plans, intentions, projections, market opportunities, suppliers, customers, marketing activities, sales, software, computer and telecommunications systems, costs and prices, wage rates, records and personnel. The terms and conditions of this Agreement shall also constitute Confidential Information;
“Copy Product”	means a product which is substantially a reproduction of the visual concept or design of one of the Products and which passes itself off as such Product, or a product which would otherwise infringe or involve use of Prestige’s Intellectual Property;
“Defective”	means in relation to a Product, a Product that has not been Manufactured to Specification, that has not been produced in accordance with GMP, that is not in compliance with Product Licenses or is otherwise not in Good Condition (and “Defect” shall be construed accordingly);
“Defective Designated Equipment”	has the meaning given to it in Clause 25.14;
“Delivery”	means a delivery made in accordance with the terms of this Agreement including, without limitation, the Delivery Terms and each Firm Order (and “Deliver” and “Delivered” shall be construed accordingly);
“Delivery Point”	has the meaning given to it in Clause 5.2;
“Delivery Terms”	has the meaning given to it in Clause 10.1;
“Designated Equipment”	means the stickpack line at the [***] Manufacturing Site currently used in the Manufacture of [***] and all bespoke equipment necessary for the Manufacture of the Products at the [***] Manufacturing Site, including [***] excluding, pursuant to Clause 25.14, any Defective Designated Equipment (if any);
“Designated Equipment Intellectual Property”	has the meaning given to it in Clause 25.13;
“Disclosing Party”	means any Party, (or any of its Affiliates, any third party designees or any of its, or their, agents, employees, contractors, sub-contractors, or advisors) who disclose(s) Confidential Information to the other Party, (or any of its Affiliates, any third party designees or any of its, or their, agents, employees, contractors, sub-contractors or advisors) in connection with this Agreement;
“Effective Date”	means the date of this Agreement;

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“EHS Standards”	means the Supplier’s corporate EHS standards as defined in its policies and standard operating procedures as applicable to the relevant Manufacturing Site;
“End Date”	means: <p>(i) in respect of Products supplied from [***], the date four (4) years after the Effective Date; and</p> <p>(ii) in respect of Products supplied from [***], the date three (3) years after the Effective Date;</p>
“Final Form Quality Agreement”	means the final form quality agreement entered into by the Parties in respect of each Manufacturing Site pursuant to Clause 2.4;
“Firm Order”	has the meaning given to it in Clause 5.2;
“First Notification”	has the meaning given to it Clause 25.9;
“Force Majeure”	means an event or circumstance beyond a Party’s reasonable control including, without limitation, any strikes, lock-outs and other industrial disputes (other than strikes lock-outs or other industrial disputes confined to or initiated by the relevant Party’s workforce), any act of God, governmental action, war, national emergency, civil commotion, riot, insurrection, looting, arson, invasion, act of a foreign enemy, civil war, rebellion, act of terrorism, explosion, fire, flood, storm, epidemic, accident, destruction of or damage to property, major infrastructure disruptions, unavailability of utilities, restraints or delays affecting shipping or carriers, or inability or delay in obtaining supplies or adequate or suitable materials;
“Forecast Schedule”	has the meaning given to it in Clause 5.1;
“Global Electronic Trading Platform”	means such electronic trading platform as is in use at the Effective Date at each Manufacturing Site or such other electronic trading platform as the Parties may agree to use through the Separation Planning Process;
“Good Condition”	means, in respect of any Products or Materials, that the Product or Material in question is the right product (in accordance with the relevant purchase order), made or Manufactured in accordance with the relevant registered process, has in no way deteriorated or broken down, is not damaged or contaminated, is in the right container (correctly labelled and properly sealed), accords with the relevant Specifications and the requirements of Applicable Laws, and is suitable for its intended purpose including meeting any agreed standard of performance;

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“Good Manufacturing Practice” or “GMP” means current practices for the Manufacture of the relevant Product or Material as required in relation to the relevant Product at the time of Manufacture by Applicable Laws of any Governmental Entity in the country in which the relevant Product or Material is Manufactured or to be Commercialised, including without limitation where such Product is a Medicinal Product or such Material is for use in a Medicinal Product and such Medicinal Product is to be Commercialised in the United States, the principles detailed in the U.S. Current Good Manufacturing Practices, 21 C.F.R. Parts 210 and 211.

For the purposes of this definition, “**Medicinal Product**” shall mean, in the case of a Product to be Commercialised in the United States, a “**Drug product**” as defined in U.S. Current Good Manufacturing Practices, 21 C.F.R. Parts 210 section 210.3, as interpreted in accordance with the Supplier's Quality Management System;

“Governmental Entity” means any court, administrative body, local authority or other governmental or quasi-governmental entity with competent jurisdiction, any supra-national, national, federal, state, municipal, provincial or local governmental, regulatory or administrative authority, agency, commission, court, tribunal, arbitral body, self-regulated entity, private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority or other governmental entity;

“Prestige Intellectual Property” has the meaning given to it in Clause 3.3;

“Improvement” means any new or improved process, technique, method, formula, invention or know-how relating to the Manufacture of the Products, discovered, developed or made by Prestige and/or the Supplier or their respective Affiliates and “Improvements” shall be construed accordingly;

“Independent Laboratory” means such independent laboratory as may be agreed between the Parties or, failing agreement, within sixty (60) days following the end of any applicable Test Period, appointed by the International Chamber of Commerce;

“Intellectual Property” means, in respect of the Products or the processes for their Manufacture, any and all rights in and/or to: (a) patents; (b) inventions, discoveries, utility models and Improvements (whether or not capable of protection by patent or registration); (c) copyright and related rights; (d) moral rights; (e) design rights; (f) trade marks and service marks; (g) business or trade names, domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition; (h) database rights; (i) Confidential Information, Know-how, trade secrets; and (j) any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Know-how”	means all information which relates to the Manufacture and quality control of the Products (including, without limitation, processes, formulae, formulation, techniques, technical data, clinical data, analytical test methods and stability data) as may be: (a) disclosed by Prestige, or its Affiliates, to the Supplier (or its Affiliates); and/or (b) created or identified pursuant to this Agreement;
“KPIs”	means the “Key Performance Indicators” measuring the Supplier’s (or its Affiliates’) performance under this Agreement as set out in Schedule 3;
“Latent Defect”	means any Defect or failure of a Product which was not apparent or could not reasonably have been identified by Prestige (or its Affiliates) from carrying out the visual inspection required under Clause 11.1;
“Losses”	means all losses, claims, liabilities, costs, awards, fines, penalties, expenses (including legal fees and other professional expenses) and damages of any nature whatsoever and whether or not reasonably foreseeable or avoidable;
“Manufacture” or “Manufacturing”	means all stages of the manufacture of the Products, including, without limitation, the planning, purchasing, receipt of Materials, manufacture, processing, compounding, [***], filling, packaging, waste disposal, labelling, leafleting, testing, quality control and assurance, sample retention, stability testing, release, dispatch and supply;
“Manufacturing Know How”	has the meaning given to it in Clause 26;
“Manufacturing Licence”	means all licences necessary for, or required in connection with, the Manufacture of the relevant Products at the relevant Manufacturing Site;
“Manufacturing Sites”	means, together, [***] or any alternative manufacturing site to which the Manufacture of any Products has been moved pursuant to Clause 6.2 (and “Manufacturing Site” shall be construed accordingly);
“Materials”	means the active ingredients, raw materials, intermediates, excipients, processing aids, labelling materials, packaging materials and other components required to Manufacture the Products;
“[***]”	[***];
“[***]”	[***];
“[***]”	[***];
“New Product SKU”	has the meaning given to it in Clause 2.3
“Option Period”	Has the meaning given to it in Clause 25.8

“Price”	means the price for the Products, where applicable with reference to the relevant year of this Agreement, as specified in Schedule 1, and as amended from time to time in accordance with Clause 12;
“Proceedings”	means any proceeding, suit or action (whether contractual or non-contractual) arising out of or in connection with this Agreement or the negotiation, existence, validity or enforceability of this Agreement;
“Product Licence”	means each and every product licence, marketing authorisation or any other authorisation(s) (as the case may be), as well as any applications therefore, required by Applicable Laws for the Commercialisation of the Products;
“Products”	means the product or products set forth on Schedule 1 and, if applicable, each New Product SKU added to this Agreement pursuant to Clause 2.3 (and “Product” shall mean each such Product by SKU);
“Purchase Date”	means such date on which the Supplier shall sell and Prestige shall buy the Designated Equipment pursuant to the exercise of either the Right to Buy or the [***], and by reference to which the price of the Designated Equipment shall be calculated;
“Qualified Person”	means the person named in the Quality Agreement (or such replacement person as may be notified by the Supplier (or its Affiliates) to Prestige in writing from time to time) who is nominated by the Supplier (or its Affiliates) and is suitably qualified to enable the Supplier (or its Affiliates) to perform and discharge its quality management obligations required by Good Manufacturing Practice or such other Applicable Laws;
“Quality Agreement”	means, pending execution of the Final Form Quality Agreement, the Agreed Form Quality Agreement, and thereafter, the Final Form Quality Agreement (as the case may be), both of which shall be an integral part of this Agreement;
“Quarterly Business Review”	has the meaning given to it in Clause 4;
“Receiving Party”	means any Party (or any of its Affiliates, any third party designees or any of its, or their, agents, employees, contractors, sub-contractors, or advisors) who receive(s) Confidential Information from the other Party (or any of its Affiliates, any third party designees or any of its, or their, agents, employees, contractors, sub-contractors or advisors) in connection with this Agreement;
“Regulator”	means any Government Entity which regulates any aspect of the Manufacture and/or Commercialisation of the Products;
“Right to Buy”	means Prestige's option to buy the Designated Equipment pursuant to Clause 25.7;
“Right to Buy Notification”	has the meaning given to it in Clause 25.8;

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“ *** ”	[***];
“ Sales Tax ”	means any sales, goods, services, turnover, value-added, or similar Tax, including (for the avoidance of doubt and without limitation): (a) US Sales Tax; and (b) any goods and services Tax or harmonized sales Tax imposed under the provisions of the Excise Tax Act (Canada), any sales Tax imposed under An Act Respecting the Quebec Sales Tax and any other similar Tax imposed under the laws of any province or territory of Canada;
“ Second Notification ”	has the meaning given to it in Clause 25.9;
“ Separation Planning Process ”	means the transition and separation planning process to be undertaken by the Parties pursuant to the Transitional Services Agreement in order to agree a Separation Plan (as defined under the Transitional Services Agreement);
“ *** Notification”	has the meaning given to it in Clause 25.8;
“ SKU ”	means a stock-keeping unit;
“ Specification(s) ”	means, with respect to each Product, the specifications registered in the relevant Product Licence and as amended from time to time in accordance with this Agreement and the Quality Agreement (and “ Specification ” shall be construed accordingly);
“ Suppliers Quality Management System ”	means the GlaxoSmithKline group’s system of quality management controls designed to ensure regulatory compliance and to assure product safety, quality and efficacy in the Supplier’s operations with regard to the manufacture and supply of any products;
“ Tax ”	means all taxes, levies, duties, imposts, charges and withholdings of any nature whatsoever, whether of the United States or elsewhere, together with all penalties, charges and interest relating to any of them or to any failure to file any return required for the purposes of any of them;
“ Term ”	has the meaning given to it in Clause 24.1;
“ Third Party ”	has the meaning given to it in Clause 39.1;
“ Test Period ”	has the meaning given to it in Clause 11.2;

“Trade Marks”	means such trade marks as Prestige may from time to time request the Supplier (or its Affiliates) to affix to the Products during Manufacture (and “Trade Mark” shall mean any one of them);
“Transitional Services Agreement”	means the transitional services agreement between, <i>inter alia</i> , GlaxoSmithKline L.L.C. and Prestige dated the same date as the Sale Agreement; and
“Working Hours”	means 9 a.m. to 5 p.m. on a Business Day or, in the context of Clause 25.9(C) and Clause 25.11(C) only, 9 a.m. to 5 p.m. on a Business Day but local time at the Manufacturing Site where the Designated Equipment is located.

1.2 In this Agreement, unless otherwise specified:

- (A) references to Clauses, sub-Clauses, paragraphs, sub-paragraphs, and Schedules and are to Clauses, sub-clauses, paragraphs, sub-paragraphs of, and schedules to, this Agreement;
- (B) a reference to any statute or statutory provision (whether of the United Kingdom or elsewhere) includes:
 - (i) any subordinate legislation (as defined by section 21(1) Interpretation Act 1978) made under it;
 - (ii) any amendment or modification of that statute or statutory provision; and
 - (iii) any statute or statutory provision which it has superseded or re-enacted (with or without modification), and any statute or statutory provision superseding it or re-enacting it (with or without modification), on, before or after the date of this Agreement;
- (C) references to a **“company”** shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (D) references to a **“person”** shall be construed so as to include any individual, firm, company, government, inter-governmental organisation, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (E) any question as to whether a person “controls” another (including for the purposes of the definition of **“Affiliate”**) shall be determined in accordance with the provisions of section 1124 Corporation Tax Act 2010 (and **“controlled”** shall be construed accordingly);
- (F) use of any genders includes the other genders;
- (G) references to the singular shall include the plural and vice-versa;

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- (H) references to writing shall include any modes of reproducing words in a legible and non-transitory form, and accordingly shall exclude e-mail and other transitory modes;
- (I) any reference to a “**day**” (including within the phrase “**Business Day**”) shall mean a period of 24 hours running from midnight to midnight;
- (J) references to times of day are to New York time;
- (K) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, or supplemented at any time; and
- (L) references to “**costs**” and/or “**expenses**” incurred by a person shall not include any amount in respect of such costs or expenses for which either that person or any member of its group for the purposes of any Sales Tax is entitled to credit as input tax.

1.3 All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.

1.4 The Schedules to this Agreement form a part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules. Where a provision of a Schedule to this Agreement conflicts with a provision of this Agreement (excluding the relevant Schedule) the relevant provision of this Agreement (excluding the relevant Schedule) shall prevail.

2. APPOINTMENT OF MANUFACTURER

2.1 With effect from the Effective Date and for the duration of the Term:

- (A) the Supplier shall (and shall procure that its Affiliates will) Manufacture the Products for Prestige and/or its Affiliates as ordered hereunder; and
- (B) Prestige shall purchase the same from the Supplier,

subject to and in accordance with the terms and conditions of this Agreement (including for the avoidance of doubt, the Quality Agreement) and Applicable Laws.

2.2 The Supplier's and its Affiliates' appointment under this Agreement is on [***], Prestige agrees that it will purchase from the Supplier (or its Affiliates) [***] of such Product for such market(s) [***] from such Manufacturing Site, subject always to:

- (A) [***];
- (B) such Manufacturing Site in all other respects being able to Manufacture [***]; and
- (C) the Agreement not having been terminated in accordance with its terms in with respect to the Product.

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For the avoidance of doubt the Parties agree and acknowledge that notwithstanding the foregoing: (i) Prestige is not obligated to buy or procure that its Affiliates will buy any minimum or specific amount of any or all of the Products under this Agreement; and (ii) Prestige shall be obligated to purchase or procure the purchase by its Affiliates of only those quantities for which it has submitted a Firm Order.

- 2.3 In the event that Prestige (or its Affiliates) chooses to introduce any new SKU to replace an existing Product under the same Trade Mark ("**New Product SKU**"), Prestige shall (or shall procure that its Affiliates will, as the case may be) provide to the Supplier (or its Affiliates) the opportunity to quote to supply such New Product SKU. The Supplier agrees to consider in good faith and use commercially reasonable endeavours to accommodate any requests from Prestige to add such New Product SKUs to the scope of this Agreement and that the basis used for establishing the Price for such New Product SKUs shall be consistent with that used to establish the Price for the existing Products unless the Supplier can offer a lower price. Any agreement to add any New Product SKUs to this Agreement shall be required to be confirmed in writing.
- 2.4 The Parties will negotiate in good faith and use all commercially reasonable endeavours to agree and enter into the Final Form Quality Agreement within 10 Business Days of this Agreement.
- 2.5 The Parties hereby agree and acknowledge that pending execution of the Final Form Quality Agreement, the Parties will operate in accordance with the provisions of the Agreed Form Quality Agreement and reference to Quality Agreement in this Agreement shall be construed accordingly during that period of time.

3. INTELLECTUAL PROPERTY AND RESTRICTIONS ON MANUFACTURE

- 3.1 The Supplier acknowledges that the Prestige Intellectual Property is owned by or licensed to Prestige (or its Affiliates), and undertakes that it shall not use any such Prestige Intellectual Property for any purpose other than the Manufacture of Products for Prestige (or its Affiliates) under this Agreement and in accordance with the licence set out in Clause 3.3. For the avoidance of doubt nothing herein shall prevent the Supplier (or its Affiliates) from using Intellectual Property that is:

(A) owned by the Supplier (or its Affiliates) but licensed to Prestige (or its Affiliates) pursuant to the Sale Agreement; and/or

(B) licensed to the Supplier (or its Affiliates) by Prestige (or its Affiliates);

subject in each case to the terms of any such licence.

- 3.2 Without prejudice to Clause 3.1, the Supplier shall not (and shall be obliged to procure that its Affiliates will not) at any time during the Term develop or manufacture, either itself or on behalf of any third party, any Copy Products. The Supplier acknowledges that manufacture of Copy Products may infringe Prestige's (or its Affiliates) Know-how or Intellectual Property and/or unfairly exploit Prestige's (or its Affiliates) goodwill in the Products.
- 3.3 Prestige hereby grants, and shall procure that its Affiliates will grant, to the Supplier and its Affiliates a non-exclusive and royalty free licence for the Term to use any and all Intellectual Property owned by or licensed to Prestige (or its Affiliates) solely to the extent necessary to be licensed to the Supplier and its Affiliates for the Manufacture of Products (collectively the "**Prestige Intellectual Property**") for the sole purpose of Manufacturing the Products for Prestige (or its Affiliates) in accordance with the terms of this Agreement. For

the avoidance of doubt, this licence shall include the use by the Supplier and its Affiliates of Prestige (or its Affiliates) name and Trade Marks on the Products and packaging materials for the Products, as directed by Prestige (or its Affiliates) and in accordance with Clause 8.2, subject to Applicable Laws.

- 3.4 Except as provided under Clause 3.3, and except for the rights to Improvements granted in accordance with Clause 20 below, nothing in this Agreement shall be construed as a transfer of or grant of rights to the Supplier (or its Affiliates) in or to any Prestige Intellectual Property, any other Intellectual Property owned, licensed or controlled by Prestige (or its Affiliates), any products (including but not limited to the Products), Product Licences, or other assets of Prestige (or its Affiliates).
- 3.5 Any and all goodwill generated by use of the Prestige Intellectual Property by the Supplier (or its Affiliates) during the Term shall enure to the benefit of Prestige or its relevant Affiliate(s) (as applicable). The Supplier shall (and shall procure that its Affiliates will) execute such documents and do such things as Prestige (or its Affiliates) may reasonably require in order for Prestige (or its Affiliates) (as applicable) to obtain the full benefit and ownership of such goodwill.

4. MEETINGS

Unless otherwise mutually agreed, the respective Parties' nominated representatives shall meet in person no less than quarterly, and monthly via teleconference, to discuss the Forecast Schedules delivered and Firm Orders placed by Prestige (or its Affiliates) pursuant to this Agreement, the KPIs and other matters relevant to the supply of Products hereunder (each such quarterly meeting hereinafter referred to as the "**Quarterly Business Review**"). At least two (2) Business Days prior to each Quarterly Business Review and as agreed upon with respect to each monthly teleconference, Prestige and the Supplier shall (or procure that its nominated Affiliate will) deliver, each to the other, a report in a form to be mutually agreed by the Parties. The Parties shall also during each Quarterly Business Review, (i) discuss without relieving any Party of or amending any obligations under this Agreement, strategies for improving the processes related to the Manufacture of the Products, (ii) report other developments which may have an effect on the Parties' obligations under this Agreement and (iii) designate additional persons for communications relating to the performance of this Agreement. Prestige shall endeavour, in good faith but at its own discretion, to provide to the Supplier (or its nominated Affiliate) at the Quarterly Business Reviews and monthly teleconferences any other readily available, appropriate data relating to the Products or Prestige's (or its Affiliates') prospective (but non-binding) demands and trends for the Products.

5. ORDERING AND FORECASTING

- 5.1 For any period following the Effective Date during which the demand management process under the Transitional Services Agreement continues to be in force, Prestige shall order its requirements for Products solely by way of such demand management process, and thereafter, on or before the first day of each month during the Term, Prestige shall (and shall procure that its relevant Affiliates will) provide the Supplier (or its nominated Affiliates) with, or with access to, a rolling forecast schedule of monthly demand for the Products for at least the following [***] (or where there remains less than [***] until the End Date, for the period of the unexpired Term) (a "**Forecast Schedule**").
- 5.2 The Forecast Schedule shall specify such volumes of Products that Prestige and/or its Affiliates require as purchaser orders and Prestige shall (and/or shall procure that its Affiliates will) place corresponding purchase orders (each such purchase order being a "**Firm Order**"). Firm Orders shall set out the quantity of Product required, the date for Delivery and location for Delivery (the "**Delivery Point**"). All Firm Orders shall be delivered

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to the Supplier (or its nominated Affiliates) via the Global Electronic Trading Platform. The Supplier shall (and shall procure that its nominated Affiliates will) work with Prestige (or its nominated Affiliates) to ensure that Prestige and its Affiliates are able to submit purchase orders via such Global Electronic Trading Platform within thirty (30) days following the date of this Agreement.

- 5.3 The Supplier shall (and shall procure that its nominated Affiliate will) keep Prestige informed of the standard lead time for the Manufacture of each Product, which shall not exceed the respective standard lead times applicable for that Product from the Manufacturing Site prior to the Effective Date) and the date for Delivery specified in a Firm Order for a Product shall not be sooner than the end of the period of the applicable lead time.
- 5.4 The Supplier shall (and shall procure that its nominated Affiliate will) respond via the Global Electronic Trading Platform (as applicable pursuant to Clause 5.2) to each Firm Order received from Prestige (or its Affiliates) within forty eight (48) hours of such receipt. The response shall include confirmation of the quantity of Product, date for Delivery and Delivery Point as set out in the relevant Firm Order.
- 5.5 Upon receipt by Prestige (or its relevant Affiliates) of the Supplier's confirmation pursuant to Clause 5.4, each Firm Order shall be regarded by the Parties as a binding, irrevocable commitment by (i) Prestige to purchase from the Supplier, and (ii) for the Supplier (or its Affiliates) to Manufacture and supply to Prestige (or its relevant Affiliate), the relevant quantity of Product according to the requirements set out in such Firm Order and in accordance with the terms of this Agreement.
- 5.6 The Supplier shall (and shall procure that its nominated Affiliates will) use all reasonable endeavours to satisfy, at no additional cost to Prestige (or its Affiliates) (other than the cost of any additional Products), any changes in quantity, Delivery Point, phasing of Deliveries or dates requested by Prestige (or its Affiliates) in respect of Firm Orders.
- 5.7 It is understood that the volumes of Products set out in the Forecast Schedule which are not specified as Firm Orders shall constitute an estimate of the future requirements of Prestige and its Affiliates for Products and do not comprise any binding commitment by Prestige or its Affiliates to purchase such Product or any minimum purchase requirement.

6. MANUFACTURING AND SUPPLY

6.1 The Supplier shall (and shall procure that its Affiliates will):

- (A) Manufacture the Products using Materials sourced according to Clause 7;
- (B) Manufacture the Products at the applicable Manufacturing Site for each Product as identified in Schedule 1;
- (C) Manufacture the Products in accordance with the Quality Agreement, the Specifications, the Manufacturing Licences, the Product Licences, the EHS Standards, GMP and Applicable Laws; and
- (D) ensure that all Products supplied under this Agreement comply with the Specifications and are in Good Condition.

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6.2 Without prejudice to Clause 19.3 and the Change Control Procedure, the Supplier shall not (and shall procure that its Affiliates do not) :

- (A) change the Manufacturing Site for any Product;
- (B) change the site of Manufacture of any of the Materials supplied by Approved Suppliers;
- (C) change the Specifications;
- (D) change the Materials or the process used in the Manufacture of the Products; or
- (E) make any other change which may reasonably be expected to affect or infringe the Product Licence or have any other regulatory impact in relation to the Products, affect the quality or physical characteristics of the Product or adversely affect the security of supply of a Product,

without either (a) providing reasonable prior written notice to Prestige to the extent the relevant change constitutes moving the Manufacture of any Products to a different Manufacturing Site owned or operated by the Supplier (or its Affiliates) or (b) in relation to any other changes, first obtaining written consent from Prestige (such consent not to be unreasonably withheld). Should Prestige be so notified or otherwise consent to any such change the Parties shall agree a detailed plan (with appropriate change control processes) setting out the responsibilities of and activities to be undertaken by each of the Parties, the milestones and timelines to ensure that the implementation of such change shall not adversely impact Prestige. Where such change is requested by the Supplier and/ or is required by Applicable Laws relating to a change in GMP or otherwise requires changes to the Manufacturing Site or Manufacturing process (other than as a direct result of changes to the Product or the Specifications), the cost of any such changes, including all reasonable and incremental costs incurred by Prestige as a result of such changes, shall be borne by the Supplier (or its Affiliates) unless otherwise agreed by the Parties in writing or provided for in this Agreement. Where such change is required by Applicable Laws specifically with respect to a Product (such as a change to the labelling of a Product or a change to its Specifications), the cost of the change shall be borne by Prestige. The Parties shall endeavour to mitigate all such costs.

6.3 The Supplier shall use all reasonable endeavours to fulfil its obligations under this Agreement in accordance with the KPIs. Without prejudice to Prestige's other rights and remedies under this Agreement, in the event the Supplier (or its Affiliates) fails to meet any of the KPIs over the applicable measurement period, the Supplier shall (and shall procure that its Affiliates will) prepare and submit to Prestige for approval as soon as reasonably practicable following (and in any case within twenty (20) Business Days of) the failure to meet the KPI being identified a corrective action plan designed to address promptly the failure and prevent its reoccurrence. The Parties shall meet to discuss such corrective action plan and, subject to Prestige's prior approval, the Supplier shall (and shall procure that its Affiliates will) implement such plan at no additional cost for Prestige. Failure to achieve KPIs on more than two occasions will result in escalation to senior management of both Parties and Prestige (and its Affiliates) will cease to be bound by any of its obligations under Clause 2.2 to purchase its requirements of any Product, until such time as any corrective action plan agreed between the Parties has been implemented (such corrective action plan to take into account any reasonable notice periods required by Prestige in respect of any alternative suppliers engaged during the time period when its obligations under Clause 2.2 have been suspended pursuant to this Clause 6.3).

6.4 The Supplier shall (and shall procure that its Affiliates will) at its own expense:

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- (A) provide and maintain premises of sufficient size and quality and all labour, plant, machinery, equipment and services necessary to enable the Supplier (or its Affiliates) to fulfil all its obligations under this Agreement including, in particular, the Manufacture of the Products; and
 - (B) maintain all premises, plant, machinery and equipment used for or in connection with the performance of its obligations under this Agreement in good working condition and in compliance with GMP, Applicable Laws and any other relevant regulatory or manufacturer's requirements.
- 6.5 The Supplier shall not (and shall procure that its Affiliates will not) use any obsolete equipment, packaging, leaflets, stamps, moulds or out-of-specification Materials and/or components in Manufacturing the Products for Prestige (or its Affiliates). Such items must be disposed of by the Supplier (or its Affiliates) securely, safely and in accordance with Applicable Laws.
- 6.6 The Supplier shall (and shall procure that its Affiliates will) take all appropriate preventative and security measures, and comply with any reasonable instruction given by Prestige from time to time in relation to such measures, to help prevent counterfeiting of the Products and to ensure that theft of the Products does not occur.
- 6.7 The Supplier shall not (and shall procure that its Affiliates will not) carry out, at any time during the Term, any other activities at a Manufacturing Site that may prejudice the quality, safety or efficacy of the Products.
- 6.8 The Supplier shall (and shall procure that its Affiliates will) maintain and update as necessary during the Term a disaster recovery and business continuity plan in respect of the Manufacture of Products at the Manufacturing Sites that meets Prestige's requirements with regard to third party contract manufacturers. The Supplier (or its Affiliates) shall review such plan at least annually and shall send such disaster recovery and business continuity plan to Prestige on request.
- 6.9 Without prejudice to its other obligations under this Agreement, the Supplier shall (and shall procure that its Affiliates will) comply with the EHS Standards in all matters relating to the performance of this Agreement.

7. SUPPLY [*] OF MATERIALS AND PRODUCTS**

- 7.1 [***] shall (and shall procure that its Affiliates will) be responsible for planning, scheduling, ordering and receiving deliveries of and paying for the relevant quantities of Materials (including from Approved Suppliers) necessary for the Manufacture of Products and for maintaining sufficient stocks of Materials to ensure, at a minimum, that Firm Orders and [***] under Clause 9.1 can be met. All purchases of Materials by [***] (or its Affiliates) shall be for itself on its own behalf and not as an agent for [***] (or its Affiliates).
- 7.2 [***] shall (and shall procure that its Affiliates will):
- (A) be responsible for all appropriate testing, analysis, release and approval of each delivery of Materials, including, without limitation, all testing required in accordance with the Quality Agreement, prior to [***]; and
 - (B) only [***] which are sourced from Approved Suppliers (where applicable) and comply with the requirements of the Quality Agreement, the Specifications, the Product Licence and GMP and which

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are in Good Condition.

- 7.3 [***] shall (and shall procure that its Affiliates will) at all times and without additional cost to [***] or its Affiliates [***] in premises that are secure, clean, compliant with GMP, Applicable Laws, the Product Licences, any applicable Manufacturing Licence, the Specifications or other [***] instructions. [***] shall (and shall procure that its Affiliates will) operate [***]. Any requirements of [***] (as provided for in the Quality Agreement or otherwise agreed by [***] (or its Affiliates) and [***]) or under Applicable Laws relating to the use and/or security of controlled drugs shall be complied with by [***] (and its Affiliates) at no additional cost to [***].
- 7.4 [***] shall (and shall procure that its Affiliates will) prepare or cause to be prepared by [***], as the case may be, [***] required by GMPs, Applicable Laws (each a "[***]"). Such [***] shall be provided without additional cost to [***] and shall include, without limitation, all required [***].
- 7.5 [***] shall (and shall procure that its Affiliates will) [***] (or its Affiliates) in such containers and packaging and with such container closure systems and labelling as set forth in the Specifications. Notwithstanding the foregoing, all such containers, packaging, container closure systems and labelling shall be, at all times, in compliance with Applicable Laws.

8. ARTWORK

- 8.1 Other than with respect to any rights that Prestige may have been granted by or agreed with the Supplier (or its relevant Affiliate) under or pursuant to the Sale Agreement and/or the Transitional Services Agreement, for the purposes of utilising any artwork owned by the Supplier for a transitional period, Prestige shall provide to the Supplier (or its nominated Affiliates) the artwork to be used in relation to the packaging of the Products. The Supplier shall (or shall procure that its Affiliates will) source (at their cost) the printed packaging materials for the Products incorporating such artwork.
- 8.2 Except as required by any Applicable Laws, the Supplier shall not (and shall procure that its Affiliates will not) affix to any Products any trade marks, business names, labels or signs other than as may previously have been approved in writing by Prestige (or its Affiliates). The Supplier shall not (and shall procure that its Affiliates will not) make any change to the layout, content or appearance of any labelling of any Products without the prior written consent of Prestige (or its Affiliates). Agreed changes shall be implemented in accordance with the Change Control Procedure.
- 8.3 The cost of any change to artwork requested by Prestige (or its Affiliates) will be paid by Prestige. To the extent any change to artwork requested by Prestige (or its Affiliates) results in the need to write off any Product or packaging materials, Prestige shall pay only the Price of such Product and the Supplier's actual purchase cost of such packaging materials and in each case only to the extent such Products were Manufactured and such packaging materials were purchased reasonably in order to meet Firm Orders. The Supplier shall (and shall procure that its Affiliates will), at Prestige's (or its Affiliates') request, either destroy (in accordance with all Applicable Laws) or make available to Prestige (or its Affiliate) any such written-off Product or packaging materials. Prestige shall pay the reasonable and properly incurred costs of such destruction, subject to such costs being agreed in writing in advance by Prestige.

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9. MANUFACTURING CAPACITY

9.1 The Supplier undertakes to use all commercially reasonable endeavours to ensure that there is at all times sufficient Manufacturing capacity at the Manufacturing Site for it or its Affiliates to:

- (A) satisfy the Product requirements set out in each Forecast Schedule; and
- (B) Manufacture a sufficient amount of Product to satisfy at least [***] percent ([***]%) of the volume required to meet Firm Orders at any time.

9.2 In the event of a breakdown or fault in Manufacture of the Products the Supplier shall notify Prestige immediately if it anticipates (acting reasonably) that such breakdown/fault cannot be remedied within [***] and will advise Prestige within [***] after such notification of the remedial action to be taken by the Supplier (or its Affiliates).

10. DELIVERY OF PRODUCTS

10.1 The Supplier shall (and shall procure that its Affiliates will) Deliver the Products [***] (Incoterms 2010), in the quantities and on the dates and to the Delivery Point specified in the relevant Firm Order ("**Delivery Terms**"). Without prejudice to Prestige's other rights and remedies under this Agreement, if any Product is delivered to somewhere other than the relevant Delivery Point, the Supplier will be responsible for (a) Delivering (or procuring the Delivery of) it to the correct Delivery Point and/or (b) for any additional expense incurred in Delivering it to the correct Delivery Point.

10.2 For each Delivery of Products, the Supplier shall (and shall procure that its Affiliates will) provide Prestige (or its relevant Affiliates) with the corresponding Certificate of Analysis, Batch Record and any other specified Delivery documentation as required.

10.3 Unless otherwise agreed in writing between the Parties, all Products supplied under this Agreement shall be Delivered with no less than [***] per cent. ([***]%) of the full shelf life for such Product remaining.

10.4 If the Supplier (or its relevant Affiliate) is unable, or anticipates (acting reasonably) that it will be unable, for any reason (including, without limitation, as a result of negligence, fault or omission or an event of Force Majeure) to Deliver in whole or in part the quantities of Product required under any Firm Order, the Supplier shall (or shall procure that its Affiliates will), as soon as it becomes aware of that fact, give written notice to Prestige setting out the reasons for such shortfall or failure. Without prejudice to Prestige's other rights and remedies under this Agreement, Prestige shall have the right in its sole discretion to cancel such order without cost to Prestige. Should Prestige not cancel the order the Parties shall endeavour to agree an alternative Delivery schedule for the shortfall or failed Delivery.

10.5 Title to and risk in the Products shall pass to Prestige or its relevant Affiliate on Delivery.

10.6 Neither payment by Prestige or its Affiliates for the Products, nor passing of risk in the Products to Prestige or its Affiliates, shall be deemed to constitute acceptance of such Products by Prestige or its Affiliates. Acceptance of Products is subject always to Clause 11.

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11. DEFECTIVE PRODUCTS

- 11.1 Upon receipt of each Delivery of Product from the Supplier (or its Affiliate), Prestige shall (or shall procure that its relevant Affiliate, agent or representative will) carry out a visual inspection so far as is reasonable to ascertain that the Delivery (including the Products Delivered) appears to be in satisfactory condition and complies with the terms of the relevant Firm Order. Prestige shall (or shall procure that its relevant Affiliate, agent or representative will) report any adverse findings to the Supplier (or its relevant Affiliate). For the avoidance of doubt, Prestige shall not be required to unpack (or procure the unpacking of) any Products Delivered or carry out (or procure carrying out of) any laboratory analysis of the Products Delivered unless otherwise expressly stated in the Quality Agreement.
- 11.2 Without prejudice to any other remedy under this Agreement, for a period of [***] after each Delivery ("**Test Period**"), Prestige (and its relevant Affiliates, agents and representatives) shall have the right to reject the Delivery (or any part of such Delivery) if, Prestige having carried out its obligations under Clause 11.1, becomes aware that any Product contained in such Delivery has not been Manufactured and/or does not otherwise accord with the requirements of this Agreement and in which case the provisions of Clause 11.4 below shall apply.
- 11.3 Deliveries shall be deemed accepted by Prestige (and its relevant Affiliate) if it fails to carry out its obligations pursuant to Clause 11.1 or if no notification is made to the Supplier (or its relevant Affiliate) within the Test Period, provided that the Supplier (or its relevant Affiliate) shall remain liable to Prestige and its Affiliates under the terms of this Agreement for any Latent Defect.
- 11.4 In the event of a Product rejection pursuant to Clause 11.2 above:
- (A) no later than the end of the Test Period referred to in Clause 11.2 above, Prestige shall (or shall procure that its Affiliates will) notify the Supplier (or its relevant Affiliate) in writing, giving reasons for the rejection;
 - (B) any outstanding payment obligation in relation to such Product shall be suspended pending resolution of the dispute;
 - (C) the Parties shall promptly endeavour to agree (each Party acting reasonably and in good faith) whether or not the Product and/or Delivery in question is Defective according to the terms of this Agreement;
 - (D) the Supplier and its relevant Affiliates shall be entitled at all reasonable times and on written notice to Prestige (or its relevant Affiliate) to inspect and/or analyse the Product and/or the Delivery in question; and
 - (E) at Prestige's (or its relevant Affiliate's) request, the Supplier shall (or shall procure that its Affiliates will) Deliver a replacement consignment of the Product to Prestige (or its relevant Affiliate) as soon as practicable after notification of the rejection, using all reasonable endeavours to ensure continuity of supply, and, subject to the provisions of Clauses 11.1 and 11.2, Prestige shall pay the Supplier for such Delivery in accordance with the payment provisions set out in this Agreement.
- 11.5 Notwithstanding the provisions of Clauses 11.1 to 11.4 and without prejudice to any other remedy under this Agreement, Prestige (or its relevant Affiliate) shall be entitled to return any Product to the Supplier (or its relevant Affiliate) at any time after receiving it and before the Product's expiry date if any Latent Defect becomes

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evident. If Prestige (or its relevant Affiliate) intends to return any Product pursuant to this Clause 11.5:

- (A) Prestige shall (or shall procure that its relevant Affiliates will) notify the Supplier (or its relevant Affiliate) in writing, giving reasons for the return;
- (B) any payment obligations still outstanding in relation to such Product shall be suspended pending resolution of the dispute;
- (C) the Parties shall promptly endeavour to agree (each Party acting reasonably and in good faith) whether or not the Product in question is subject to a Latent Defect;
- (D) the Supplier and its Affiliates shall be entitled at all reasonable times and on written notice to Prestige (or its relevant Affiliate) to inspect and/or analyse the Product in question;
- (E) at Prestige's (or its relevant Affiliate's) request, the Supplier shall (or shall procure that its Affiliates will) Deliver a replacement consignment of the Product to Prestige (or its relevant Affiliate) as soon as practicable after notification of the return, using all reasonable endeavours to ensure continuity of supply, and, subject to the provisions of Clauses 11.1 and 11.2, Prestige shall pay the Supplier for such Delivery in accordance with the payment provisions set out in this Agreement; and
- (F) where Prestige (or its relevant Affiliate) reasonably suspects that Products subsequently Delivered are likely to have the same (or substantially the same) Latent Defect as the notified Products, Prestige (or its relevant Affiliate) may return such Products even where any such Latent Defect has not yet become evident and, without prejudice to any other remedy under this Agreement, the provisions of Clauses 11.5 (A) to 11.5 (E) shall apply to any such returned Products.

11.6 Without prejudice to Clause 11.5, the Parties shall use all reasonable endeavours to resolve any dispute that may arise pursuant to this Clause 11. However, if within [***] after the Supplier is notified of any Delivery of allegedly Defective Products, the Parties fail to agree whether any Products supplied by the Supplier (or its Affiliates) to Prestige (or its Affiliates) are Defective or may be rejected or returned for any reason, then:

- (A) in the case of a rejection or return for quality reasons, the question of whether a product is Defective shall be determined by an Independent Laboratory and the decision of the Independent Laboratory shall be final and binding on the Parties. The Independent Laboratory shall act as an expert and not as an arbitrator and (unless the Independent Laboratory otherwise determines) its fees shall be borne by the Party against whom the Independent Laboratory's decision is given; and
- (B) in the case of a rejection or return for any other reasons, in the event the parties are unable to resolve the matter by mutual agreement the matter shall be subject to resolution in accordance with Clause 41.

11.7 If the Parties agree, or the Independent Laboratory finds, that any Delivery or Products may be rejected and/or returned in accordance with Clauses 11.2 or 11.5 then, without prejudice to any other rights or remedies under this Agreement:

- (A) the Supplier shall reimburse Prestige for any reasonable costs incurred in disposal of the rejected/

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returned Product;

- (B) the Supplier shall promptly reimburse Prestige in respect of any cost (including, without limitation, freight, clearance, duty, storage incurred by Prestige (or its relevant Affiliate) in respect of the rejected/returned Product; and
- (C) if no replacement Delivery of Product has already been made in accordance with Clauses 11.4 or 11.5 then, at Prestige's election, either: (i) Prestige shall give the Supplier (or its relevant Affiliate) the opportunity to replace the rejected/returned Product as soon as reasonably practicable with a Delivery of Product which complies with the requirements of this Agreement at no extra cost to Prestige; or (ii) the Supplier shall reimburse Prestige's incremental costs incurred in sourcing alternative Product from another supplier, provided that where Prestige considers in its reasonable opinion that neither (i) nor (ii) is practicable, the Supplier shall reimburse any monies already paid by Prestige for the rejected/returned Product.

11.8 If the Independent Laboratory finds that the Product in question is not Defective, then Prestige shall pay for such Products as are Delivered by the Supplier (or its Affiliates) in accordance with the payment provisions contained in this Agreement and reimburse to the Supplier any reasonable costs incurred associated with additional testing of the Delivery for the purposes of this Clause 11.

12. PRICE AND PRICE REVIEWS

12.1 Prestige shall pay the relevant Price for each Product, as such Price may be amended from time to time in accordance with this Agreement.

12.2 The Price is exclusive of all taxes and duties including but not limited to Sales Tax and export duties. Prestige shall pay to the Supplier such additional amounts in respect of Sales Tax (on receipt of a valid Sales Tax invoice (if applicable) from the Supplier), export duties and any other taxes and duties as are chargeable on a supply of Products.

12.3 Subject to Clause 12.4 and Clause 12.5, the Prices set out in Schedule 1 are fixed for the Term.

12.4 In respect of the [***] period commencing on the date [***] after the Effective Date and in respect of each subsequent [***] period thereafter during the Term (each such period a "**Review Period**"), representatives of the Parties shall [***] in advance of each such Review Period discuss and review in good faith the actual cost to the Supplier (or its Affiliates) of the Materials and endeavour to agree on any appropriate adjustments to the Price of any Products for the respective Review Period to reflect any material changes in the aggregate cost of Materials (such adjustment a "**Price Adjustment**"). For the avoidance of doubt, the Parties shall not seek a Price Adjustment pursuant to this Clause 12.4 unless there has been at least a [***] per cent. increase or decrease in the aggregate cost of Materials for a Product sustained over a period of no less than [***] in the [***] prior to the date of the review of the cost of the Materials. Any Party proposing a Price Adjustment in accordance with this Clause 12.4 must provide appropriate supporting documentation to justify the proposed Price Adjustment and any change to Prices shall be subject to the mutual written agreement of the Parties. Any Price Adjustments agreed pursuant to this Clause 12.4 shall take effect from the first day of the relevant Review Period, unless otherwise agreed. For the avoidance of doubt:

- (A) any such Price Adjustment agreed pursuant to this Clause 12.4 shall not apply to any Firm Orders

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already placed as at the date such Price adjustment takes effect; and

- (B) notwithstanding that discussions may be ongoing between the Parties with respect to a potential Price Adjustment the Supplier shall (and shall procure that its Affiliates will) continue to supply Prestige (or its Affiliates) at the Price prevailing at the time.

12.5 The Price shall be subject to adjustment at any time to reflect any reductions in cost achieved through the Continuous Improvement Programme or any savings resulting from changes in process, formulation or components introduced by Prestige (or its Affiliates) relating to the Products.

13. INVOICING AND PAYMENT TERMS

13.1 On or after Delivery of the Products in accordance with Clause 10, the Supplier shall invoice (or procure that its relevant Affiliate invoices) Prestige for the relevant Price in respect of such Products.

13.2 Each invoice issued by the Supplier (or any of its Affiliates) under this Agreement shall specify:

- (A) the Price in USD for Products.
- (B) the quantity of Product Delivered and the corresponding Firm Order number;
- (C) the amount of Sales Tax due (if any) in respect of the Product Delivered; and
- (D) any other amounts reimbursable to the Supplier pursuant to this Agreement.

13.3 At the Supplier's discretion, any or all invoices issued by the Supplier or its Affiliates may be delivered to Prestige via the Global Electronic Trading Platform and in such case Prestige:

- (A) shall work with the Supplier or its nominated representative, to ensure that Prestige is able to accept invoices via the Global Electronic Trading Platform within thirty (30) days of the date of this Agreement; and
- (B) acknowledges and agrees that in such case paper invoices will not be provided by the Supplier.

13.4 Each Party's implementation and continued operation of any Global Electronic Trading Platform as required pursuant to Clause 13.3, including any ongoing fees charged by the respective service providers in relation to the same, shall be the sole responsibility of each such Party, and a Party shall not charge the other Party for such implementation and operation.

13.5 Unless otherwise stated in the relevant Firm Order, payment of each invoice properly submitted by the Supplier or its Affiliates in accordance with this Agreement shall be made in the currency specified in the invoice in accordance with Clause 13.2 (A) within [***] after receipt of such invoice by electronic transfer to the bank account nominated by the Supplier in writing from time to time.

14. THE PRODUCT LICENCE AND MANUFACTURING LICENCE

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- 14.1 This Clause 14 shall be subject to the terms and conditions of the Sale Agreement.
- 14.2 Prestige shall be responsible for the registration (or procuring the registration) of the Products with any Regulator or other Governmental Entity as required for the Commercialisation of the Products. The Supplier shall (and shall procure that its Affiliates will) provide, free of charge (unless otherwise provided for in the Sale Agreement), all such assistance as Prestige (or its Affiliates) may request (or which may be required by a Regulator) from time to time in connection with any applications for, and amendments or additions to, any Product Licence.
- 14.3 The Supplier hereby undertakes that it and its Affiliates will observe and comply with all requirements of the Product Licence and any amendments or additions to such Product Licence insofar as they apply to the Manufacture of Products under this Agreement and have been, or from time to time are, disclosed by Prestige (or its Affiliates) to the Supplier (or its Affiliates).
- 14.4 The Supplier shall (and shall procure that its Affiliates will):
- (A) at its own cost obtain and maintain throughout the Term all necessary Manufacturing Licences; and
 - (B) supply to Prestige free of charge on request a copy of each Manufacturing Licence.

15. QUALITY ASSURANCE

- 15.1 The Supplier shall (and shall procure that its Affiliates will) at all times employ a Qualified Person who shall be responsible for confirming by his/her signature on the appropriate Batch Record and Certificate of Analysis that each batch of Products Manufactured conforms with the Specifications and is Manufactured in accordance with GMP. The Supplier shall be responsible for the release (or procuring the release) of each batch of Product, under a release procedure agreed with Prestige and defined in the Quality Agreement, after the Batch Record and Certificate of Analysis for each batch of Product have been produced.
- 15.2 The Supplier shall (and shall procure that its Affiliates will) at all times ensure that quality assurance tests specified in the Quality Agreement or otherwise agreed in writing by the Parties from time to time, are adopted and that reference and retention samples of each batch of Materials and Products Manufactured are taken, analysed and retained in accordance with the Quality Agreement and the requirements of GMP. Such samples shall (notwithstanding any termination of this Agreement) be retained by the Supplier (or its Affiliates) for the periods prescribed in the Quality Agreement.
- 15.3 The Supplier shall (and shall procure that its Affiliates will) ensure that testing methodology and testing reference standards comply with GMP. The Supplier shall (or shall procure that its Affiliates will) provide to Prestige (or its relevant Affiliate), in a timely manner and at no additional cost, sufficient quantities of reference samples for the Products to enable Prestige (or its relevant Affiliate) to carry out and/or maintain the necessary testing capability to comply with its regulatory obligations and the obligations set out in the Quality Agreement throughout the Term.
- 15.4 The Supplier shall (and shall procure that its Affiliates will) institute and maintain process controls during the Manufacture of the Products in accordance with GMP. Further, the Supplier shall (or shall procure that its Affiliates will) maintain full records of such process controls which shall be made available to Prestige on request together with retained in-process samples. Such records and samples shall be retained by the Supplier (or its Affiliates) for a period of [***] from the time they were made or taken (or such other period as may be

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specified in the Quality Agreement).

15.5 The Supplier shall (and shall procure that its Affiliates will) promptly report any adverse trends to Prestige that arise during the normal or stability testing of the Products.

16. DOCUMENTATION AND REPORTS

The Supplier shall (and shall procure that its Affiliates will):

- (A) complete and maintain the documentation relating to the Manufacture of each batch of the Products in accordance with GMP and shall retain such documentation for the periods set out in Schedule 4 (or such other period as is defined in the Quality Agreement);
- (B) supply to Prestige upon reasonable request copies of its analysis and data supporting each Certificate of Analysis;
- (C) provide to Prestige upon reasonable request all manufacturing and quality control records in respect of the Products and the Materials used in their Manufacture;
- (D) notify Prestige of any batch failures, process deviations and out of Specification results which arise during Manufacture of the Product and provide details of such batch failures, process deviations and out of Specification results as specified in the Quality Agreement;
- (E) conduct periodic Product quality reviews in accordance with the Quality Agreement;
- (F) complete and lodge with the appropriate Regulator or other Government Entity, where required, all documentation relating to the export of Products where their delivery involves export from the country of Manufacture;
- (G) keep complete and systematic records of any documentation generated pursuant to this Agreement; such records to include any operational documentation relating to the Manufacture of the Products, any financial records and procedures (including records for compliance with Applicable Laws), distribution and disposition records and all such other documentation relating to the Products and Manufacturing activities under this Agreement;
- (H) preserve all records referred to in Clause 16 (G) in accordance with the relevant retention periods specified in Schedule 4 and the Quality Agreement and preserve any records not identified in Schedule 4 or the Quality Agreement for the greater of: (i) [***]; or (ii) such other period agreed in writing by the Parties; provided that, in the event a legal or regulatory matter arises requiring preservation of certain records, the Supplier shall (or shall procure its Affiliates will) suspend destruction of such records as requested by Prestige or any Regulator; and
- (I) without prejudice to Clause 18, permit Prestige access upon reasonable request during normal business hours to all records retained pursuant to this Clause 16.

17. CUSTOMER COMPLAINTS AND RECALL PROCEDURES

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- 17.1 Subject to Prestige being the Product License holder for a Product, Prestige shall be solely responsible in accordance with Applicable Laws for instigating product recalls relating to that Product and for the reporting (or procuring the reporting) to Regulators of any safety notifications, complaints and product recalls relating to the Product which arise for any reason. The Supplier shall (and shall procure that its Affiliates will) promptly advise Prestige of any occurrence or information which arises out of the Manufacture of Products and which has or could be reasonably expected to have adverse regulatory compliance and/or reporting consequences concerning the Products, and provide relevant information to Prestige upon request and consult with Prestige in respect of the actions that will be taken. For the avoidance of doubt, to the extent that for any period between the Effective Date and date Prestige becomes the Product License holder for a Product during which the Supplier remains the Product License holder for that Product, the Supplier shall be solely entitled and responsible for instigating product recalls relating to that Product and for the reporting or notifying to Regulators of any safety notifications, complaints and product recalls relating to that Product which arise for any reason and the Supplier shall be entitled to exercise such entitlement and responsibility in its sole discretion and without liability to the Supplier. For such period Prestige shall (and shall procure that its Affiliates will) promptly advise the Supplier of any occurrence or information in respect of Products of which it becomes aware and which has or could be reasonably expected to have adverse regulatory compliance and/or reporting consequences concerning the Products, and provide relevant information to the Supplier upon request and consult with Prestige in respect of the actions that will be taken. If during such period the Supplier or any Regulator deems that a Product recall is required, the recall strategy shall be developed by Supplier and followed by Prestige (or its Affiliates) with strict regard to timing requirements.
- 17.2 Without prejudice to the generality of the foregoing, the Supplier shall (and shall procure that its Affiliates will) promptly notify Prestige upon becoming aware of any information or occurrence related to the Manufacture of any Product, which could have adverse regulatory, compliance and/or reporting consequences, including without limitation where any Product:
- (A) its labelling may have been mistaken for, or applied to, another product;
 - (B) may be affected by bacteriological or other contamination, significant chemical, physical or other change or deterioration or stability failures;
 - (C) is the subject of a complaint by a third party or customer; or
 - (D) may not comply with the Specifications.
- 17.3 If the Supplier or its Affiliates become aware of any information or occurrence related to the Manufacture of Products as referred to in Clause 17.2, including but not limited to the specific situations provided for in Clause 17.2, the Supplier shall (or shall procure that the relevant Affiliate will) take all such actions as Prestige may reasonably direct.
- 17.4 If Prestige or any Regulator deems that a Product recall is required, the recall strategy shall be developed by Prestige and followed by the Supplier (or its Affiliates) with strict regard to timing requirements.
- 17.5 Without prejudice to any other right or remedy under this Agreement, if any action or recall required under this Clause 17 is necessitated by a failure of the Supplier (or its Affiliates) to comply with any or all of its obligations under this Agreement (including, without limitation, the failure or Defect of the Product caused by any of the specific situations set out in Clause 17.2(A) to 17.2(D) above) or any negligence or other fault of the Supplier

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(or its Affiliates), the costs of the action or recall shall be paid by the Supplier (including, without limitation, a refund to Prestige (or its Affiliates) of the sums paid in respect of the affected Products and all expenses incurred by Prestige (or its Affiliates) in conducting, or otherwise as a result of, the action or recall). In all other cases, the costs of the action or recall shall be borne by Prestige.

- 17.6 Upon notification from Prestige that it has received a complaint in respect of the Products which may be due to their Manufacture, the Supplier shall (and shall procure that its Affiliates will) promptly conduct all such internal investigations as may be necessary to determine the validity of such complaint. The findings of such investigations shall be reported in writing to Prestige within five (5) Business Days after completion of the investigation, provided always that the Supplier (or its relevant Affiliate) shall keep Prestige informed of the progress of the investigation. Prestige shall thereafter respond to the complainant and provide a written copy of such response to the Supplier (or its relevant Affiliate) and the Supplier shall (or procure that its Affiliates will) carry out any actions which Prestige may reasonably require in connection therewith.
- 17.7 To the extent that the information, documentation or knowledge relating to the Manufacture of the Product concerned exists at the Manufacturing Site as at the Effective Date, the rights and obligations set out in this Clause 17 shall apply irrespective of whether the Manufacture of the Product concerned took place prior to or after the Effective Date.

18. INSPECTIONS AND AUDITS

- 18.1 Prestige shall have the right, on [***] basis (for each of the different types of audit specified herein) and on [***] prior notice (or at any time for cause), to enter and inspect the Manufacturing Site and any related utilities and plant, machinery and equipment used in the Manufacture of Products in order to:
- (A) carry out a GMP, quality and/or compliance audit of those parts of the Manufacturing Site involved in, or which could affect, the Manufacture of the Products; and/or
 - (B) conduct an environment, health, safety and sustainability audit of the Supplier (or its relevant Affiliate) to monitor the Supplier's (or its relevant Affiliate's) compliance with applicable environmental laws and regulations and with the EHS Standards as set out in this Agreement.

The Supplier shall (and shall procure that its Affiliates will) provide any assistance that is necessary in order for such audit to be carried out.

- 18.2 Prestige shall also have the right to carry out follow up audits if any observations have been noted during any audit carried out pursuant to Clause 18.1 above.
- 18.3 The Supplier shall (and shall procure that its Affiliates will) use all reasonable endeavours to ensure that any corrective or preventative actions identified in any audit carried out pursuant to this Clause 18 are carried out promptly, and, in the event that Prestige is not satisfied (acting reasonably) with the audit or with any corrective or preventative actions taken, Prestige shall (if the Parties are unable to agree a resolution) be entitled to terminate this Agreement immediately on written notice to the Supplier (or its relevant Affiliate) in relation to any or all of the Products which are affected.
- 18.4 The Supplier (or its relevant Affiliate) shall be solely responsible for ensuring (and procuring that its Affiliates ensure) that the GMP compliance status of any authorised sub-contractors used in relation to the performance

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of its obligations under this Agreement. For the avoidance of doubt the use of any sub-contractors in the Manufacturing of Product shall require the prior approval of Prestige. The Supplier shall (and shall procure that its Affiliates will) use all reasonable endeavours to procure the same inspection rights for Prestige described in this Clause 18 at the premises of any such sub-contractor if requested by Prestige. If the Supplier is unable to procure such rights, it shall carry out such inspections itself on Prestige's behalf and shall report its findings to Prestige within ten (10) Business Days after completing the same.

19. REGULATORY COMPLIANCE AND CHANGE CONTROL

19.1 The Supplier shall (and shall procure that its Affiliates will) promptly and at its own expense provide, to each and every Regulator, all such documents and information in its possession or control as may be required by such Regulator with respect to the Manufacture of the Products. The Supplier shall (or shall procure that its Affiliates will) promptly notify and consult with Prestige upon receipt of any such request for information and provide Prestige with the opportunity to review and comment on in advance any submissions of information to be made to any Regulator (including any response to the findings of an inspection carried out according to Clauses 18.1 or 18.2).

19.2 The Supplier shall (and shall procure that its Affiliates will) allow and shall be responsible for handling inspections of the Manufacturing Sites requested by a Regulator and, to the extent such inspections affect the Manufacture of the Products, shall promptly disclose the findings of such inspections in writing to Prestige. The Supplier shall (and shall procure that its Affiliates will), to the extent reasonably practicable, notify Prestige in advance of any such inspection relating to the Manufacture of Products, and provide Prestige with the opportunity to attend such inspection, subject to any reasonably imposed confidentiality obligations.

19.3 If Prestige requires any changes to be made with respect to the Specifications and/or Manufacture of the Products (in which case, Prestige shall notify the Supplier and provide details of the required change) or if any Regulator requires any changes to be made with respect to the Manufacturing Site, Specifications and/or Manufacture of the Products (in which case, the Party receiving notification from the Regulator shall promptly inform the other Party and provide copies of any relevant documents delivered to it by the said Regulator within [***] after receipt), the following shall apply:

(A) for changes required by Prestige:

(i) the Supplier shall (and shall procure that its Affiliates will), within [***] after receipt of Prestige's notification, provide Prestige with an estimate of the timeframe and cost required to implement the change, such estimate to include details and the estimated cost of any write-offs of Product or packaging materials which the Supplier (or its Affiliates) reasonably believes it will be required to undertake;

(ii) once Prestige has approved the estimate provided in accordance with Clause 19.3(A)(i) above, the Supplier shall (and shall procure that its Affiliates will) implement the change within the agreed timeframe, in accordance with the Change Control Procedure and using all reasonable endeavours to minimise costs arising from the change; and

(iii) Prestige will pay the agreed cost of the change save that in respect of any Product or packaging materials that are to be written off, Prestige will only pay the Price of such Product and the Supplier's actual purchase cost of packaging materials and in each case only to the extent

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such Products were Manufactured and such packaging materials were purchased reasonably in order to meet Firm Orders. The Supplier shall (and shall procure that its Affiliates will), at Prestige's request, either destroy (in accordance with all Applicable Laws) or make available to Prestige any such written off Product or packaging materials. Prestige shall pay the reasonable actual costs of such destruction, subject to such costs being agreed in writing in advance by Prestige.

(B) for changes required by a Regulator:

(i) the Parties shall agree (each acting reasonably and in good faith) as soon as practicable and in line with any timeframe imposed by the Regulator and in any event within [***] after notification an action plan with a target completion date for implementing the change;

(ii) if Prestige is required or considers it necessary to change the Product Licence, then, to the extent reasonably practicable (and subject to any timeframe imposed by the Regulator), the implementation of changes shall be deferred to allow Prestige time to change the Product Licence;

(iii) if Clause 19.3(B)(ii) does not apply, the Supplier shall (or shall procure that its Affiliates will) implement such changes within the timeframe required by the Regulator and in accordance with the Change Control Procedure; and

(iv) the cost of implementing the change will be allocated between the Parties as follows:

(a) to the extent that the change relates to the Product or the Specifications, Prestige will pay the agreed cost of the change save that in respect of any Product or packaging materials that are to be written off, Prestige will only pay the Price of Product and the actual purchase cost of packaging materials and in each case only to the extent such Products were Manufactured and such packaging materials were purchased reasonably in order to meet Firm Orders. The Supplier shall (and shall procure that its Affiliates will), at Prestige's request, either destroy (in accordance with all Applicable Laws) or make available to Prestige any such written off Product or packaging materials. Prestige shall pay the reasonable actual costs of such destruction, subject to such costs being agreed in writing in advance by Prestige; and

(b) to the extent that the change results from a change in GMP or otherwise requires changes to the Manufacturing Site or Manufacturing Process (other than as a direct result of changes to the Product or the Specifications), the Supplier shall (and shall procure that its Affiliates will) pay the costs and expenses of implementing such change together with all costs of write-off of any inventory of Products or Materials rendered obsolete as a result of the change and destruction and waste disposal in connection with such Products and Materials.

19.4 The Supplier shall (and shall procure that its Affiliates will) respond in an effective and timely manner to any questions of a regulatory nature relating to the Products or their Manufacture raised by Prestige, its Affiliates, sub-licensees or distributors or by a Regulator and, in the case of questions from a Regulator, shall provide Prestige with the opportunity to review in advance any responses to be given.

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20. CONTINUOUS IMPROVEMENT

20.1 The Supplier shall use all commercially reasonable endeavours to identify and implement potential areas of cost reduction relating to the performance of its obligations under this Agreement including the following potential Improvements:

- (A) [***];
- (B) [***];
- (C) [***];
- (D) [***];
- (E) [***];
- (F) [***];
- (G) [***];
- (H) [***]; and
- (I) [***],

collectively, the “**Continuous Improvement Programme**”.

20.2 In order to pursue the Continuous Improvement Programme, and subject always to the Parties' confidentiality requirements and/or obligations, the Parties shall exchange all relevant information in their possession, including, without limitation, details of the Supplier's costs of all stages and Materials in the Manufacturing process.

20.3 The Parties shall procure that their representatives shall use the first Quarterly Business Review to agree: (a) objectives for the Continuous Improvement Programme; (b) targets for cost reduction; and (c) the means of measuring and implementing the results of the Continuous Improvement Programme. Progress against objectives shall be measured annually in accordance with Clause 20.4. The Supplier will use all reasonable endeavours to achieve the objectives identified for the relevant year.

20.4 The Parties shall (or procure that their representatives shall) use the Quarterly Business Reviews during the Term to review performance in relation to the objectives agreed pursuant to Clause 20.3 and on each such occasion the Supplier shall provide Prestige (or its nominated Affiliate) with details of costs of all stages and Materials in the Manufacturing process (including, without limitation, access to documentation generated or retained according to the provisions of this Agreement).

20.5 Each Party shall disclose to the other Party all Improvements of which it is aware and, subject to: (a) Clause 20.6; and (b) obtaining any necessary approvals from the relevant Regulator, such Improvements shall be

implemented in accordance with the Change Control Procedure.

- 20.6 Implementation of any Improvement shall be subject to the mutual agreement of the Parties where it involves investment expense to be incurred by the Supplier.
- 20.7 Subject to Clause 20.6 above, the Supplier shall not unreasonably refuse or delay its implementation of any Improvements agreed pursuant to this Clause 20 or otherwise required for regulatory purposes.
- 20.8 Each Party shall bear its own costs associated with the identification and implementation of Improvements pursuant to this Clause 20.
- 20.9 Without prejudice to Clause 20.8, to the extent the net benefits of cost reductions and improved efficiencies (taking into account investment and other expenses incurred by each Party to implement the relevant Improvement) achieved as the result of the Continuous Improvement Programme are only applicable to the Manufacture of the Product for Prestige (or its Affiliates) under this Agreement, the amount of benefit shall be shared equally between Prestige and the Supplier and shall be applied by way of a reduction in Price subject to Clause 12.5.
- 20.10 All Intellectual Property and other rights in and title to any Improvements made solely by the Supplier and/or its Affiliates which are capable of being used independently of Prestige's Intellectual Property, shall remain the property of the Supplier and/or its Affiliates. The Supplier now grants and shall procure that its relevant Affiliates shall grant to Prestige and its Affiliates a non-exclusive, perpetual, irrevocable, worldwide, sub-licensable and royalty-free licence to use such Improvements in relation to the supply and use of Products Manufactured under this Agreement.
- 20.11 All Intellectual Property and other rights in and title to any Improvements made solely by the Supplier and/or its Affiliates, which are not capable of being used independently of Prestige's Intellectual Property, shall remain the property of the Supplier and/or its Affiliates. The Supplier now grants and shall procure that its relevant Affiliates shall grant to Prestige a non-exclusive, perpetual, irrevocable, worldwide, sub-licensable and royalty-free licence to use such Improvements for any purpose whatsoever, provided that use by the Supplier (and its Affiliates) of any such Improvement falling within this Clause 20.11 will be subject to the provisions relating to the Prestige Intellectual Property, if applicable.
- 20.12 All Intellectual Property and other rights in and title to any Improvements made by the Supplier or its Affiliates jointly with Prestige and/or its Affiliates shall, where they are capable of being used independently of Prestige's or its Affiliates' Intellectual Property, be owned jointly by the Parties and each Party shall be free to use the same free of charge for any purpose and without restriction anywhere in the world with the right to grant licences thereto. To the extent that any jointly owned Intellectual Property is capable of registration, the Parties shall discuss and agree (each acting reasonably and in good faith) a filing strategy including responsibilities for making applications and allocation of costs in respect of the same between the Parties.
- 20.13 All Intellectual Property and other rights in and title to any Improvements made by the Supplier and/or its Affiliates jointly with Prestige and/or its Affiliates are, where they are incapable of being used independently of Prestige's or its Affiliates' Intellectual Property, hereby assigned with full title guarantee to Prestige (and, to the extent necessary, this assignment shall operate as a present assignment of future rights). The Supplier (and its Affiliates) shall only use such Improvements for the Manufacture of Products under this Agreement in accordance with the licence set out in Clause 3.3.

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20.14 All Intellectual Property and other rights in and title to any Improvements made solely by Prestige and/or its Affiliates shall remain the property of Prestige and/or its Affiliates and shall only be used by the Supplier for the Manufacture of Products under this Agreement in accordance with the licence set out in Clause 3.3.

20.15 Except as stated otherwise, each Party shall (and shall procure that its Affiliates will):

- (A) execute such documents and take such other steps as may be required to give effect to the assignments, licences and consents made, granted or given under or pursuant to this Clause 20; and
- (B) be responsible at their own cost for any filings required in order for it to benefit from, or protect, its ownership or licence of any Intellectual Property rights arising pursuant to this Clause 20.

21. WARRANTY; INDEMNITY; LIMITATION OF LIABILITY

21.1 The Supplier represents, warrants and undertakes that:

- (A) the Product supplied under this Agreement shall conform to the Specifications, the requirements of the Product Licence and Manufacturing Licence and be in Good Condition;
- (B) the Product shall be Manufactured, quality controlled and packed in accordance with GMP, the Quality Agreement and Applicable Laws;
- (C) it will convey good title to the Product supplied under this Agreement;
- (D) except in respect of any Intellectual Property licensed to the Supplier (or its Affiliates) by or on behalf of Prestige or its Affiliates and used in accordance with the terms of this Agreement, the Manufacture of the Products, it will not infringe the Intellectual Property or any other rights of any third party;
- (E) it has capacity and has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms and, so far as it is aware, the execution, performance and delivery of this Agreement will not conflict with any obligation to which the Supplier is subject;
- (F) it will hold all necessary consents, authorisations, registrations, agreements, certificates, licences, approvals, permits, authorities or exemptions from any Regulator which are required to perform its obligations under this Agreement and has paid all fees due in relation to them and is not in breach of any conditions under them where such breach would be likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (G) without prejudice to its other obligations under this Agreement, it shall promptly notify Prestige of:
 - (i) any findings, warnings or citations from any Regulator for deficiencies in GMP and/or breach of any Applicable Laws;
 - (ii) any material prosecution, litigation, or arbitration proceedings; and

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(iii) any material administrative or governmental investigations;

in respect of (or which could reasonably be considered likely to affect) one or more Manufacturing Sites or the business carried on there in relation to the Products and of which the Supplier is aware or becomes aware (or ought to be aware) during the Term.

21.2 The Supplier shall indemnify, and keep indemnified, Prestige and its Affiliates on demand from and against any and all Losses that may be suffered or incurred by Prestige and/or any of its Affiliate(s) arising out of or in connection with:

- (A) any breach of representation or warranty made by the Supplier under this Agreement;
- (B) any third party personal injury, illness or death, or loss or damage to third party property arising from the Supplier's failure to Manufacture and/or failure to supply the Product according to the terms of this Agreement;
- (C) any fault, negligence or wilful misconduct of the Supplier, its Affiliates or any of their respective officers, employees, agents or sub-contractors with respect to the performance of this Agreement; and
- (D) the cost of any recall of the Product where and to the extent that the Supplier is liable for such cost according to Clause 17,

except to the extent that the Loss in question resulted from the negligence or wilful misconduct of Prestige, or its Affiliate(s) or any of its or their employees, agents or sub-contractors, or any breach by Prestige or its Affiliate(s) of any of its obligations, representations or warranties under this Agreement.

21.3 Subject to Clause 21.5, neither Party nor their respective Affiliates, nor any of its or their respective directors, officers, employees or agents, shall have any liability to the other Party nor their respective Affiliates, nor any of its or their respective directors, officers, employees or agents under or in relation to this Agreement for any:

- (A) [***];
- (B) [***];
- (C) [***];
- (D) [***];
- (E) [***];
- (F) [***];
- (G) [***]; or
- (H) [***].

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21.4 Subject to Clause 21.5 the Supplier's total liability in respect of this Agreement shall be limited:

- (A) [***]; and
- (B) [***].

21.5 Nothing in this Agreement shall exclude or in any way limit either Party's liability for:

- (A) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- (B) fraud or fraudulent misrepresentation by it or its employees;
- (C) wilful misconduct; or
- (D) any other liability to the extent the same may not be excluded or limited as a matter of law.

22. ETHICAL STANDARDS AND HUMAN RIGHTS

22.1 Unless otherwise required or prohibited by law, the Supplier undertakes and warrants that in relation to the performance of its obligations under this Agreement:

- (A) neither it nor its Affiliates will employ, engage or otherwise use any child labour in circumstances such that the tasks performed by any such child labour could reasonably be foreseen to cause either physical or emotional impairment to the development of such child;
- (B) neither it nor its Affiliates will use forced labour in any form (prison, indentured, bonded or otherwise) and its employees are not required to lodge papers or deposits on starting work;
- (C) it and its Affiliates will provide a safe and healthy workplace, presenting no immediate hazards to its employees;
- (D) any housing provided by the Supplier or its Affiliates to its employees will be safe for habitation;
- (E) it and its Affiliates will provide access to clean water, food, and emergency healthcare to its employees in the event of accidents or incidents at the Supplier's workplace;
- (F) neither it nor its Affiliates will discriminate against any employees on any ground (including race, religion, disability or gender);
- (G) neither it nor its Affiliates will engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse and does not use cruel or abusive disciplinary practices in the workplace;
- (H) it and its Affiliates will pay each employee at least the minimum wage, or a fair representation of the

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prevailing industry wage (whichever is the higher) and provides each employee with all legally mandated benefits;

- (I) it and its Affiliates will comply with the laws on working hours and employment rights in the countries in which it operates;
- (J) it and its Affiliates will be respectful of its employees' right to join and form independent trade unions and freedom of association; and
- (K) it and its Affiliates will comply with the Supplier's Anti-Bribery and Corruption Policies.

22.2 The Supplier is responsible for controlling its own supply chain and shall encourage compliance with ethical standards and human rights by any supplier of goods and services that are used by the Supplier (or its Affiliates) when performing its obligations under this Agreement.

22.3 The Supplier shall ensure that it has ethical and human rights policies in place and an appropriate complaints procedure to deal with any breaches of such policies. In the case of any complaints, the Supplier shall (or shall procure that its Affiliates will) report the alleged complaint and proposed remedy to Prestige.

22.4 Prestige reserves the right upon reasonable notice (unless inspection is for cause, in which case no notice shall be necessary) to enter upon the Supplier's premises to monitor compliance with the provisions of this Clause 22, and shall, subject to compliance with Applicable Laws, provide to Prestige any relevant documents requested by Prestige in relation thereto.

23. INSURANCE

23.1 The Supplier shall (or shall procure that its Affiliates will) take out, and maintain for the duration of the Term, insurance policies to the value sufficient to meet its liabilities under or in connection with this Agreement except to the extent that it self-insures for such matters as a standard corporate policy.

24. TERM AND TERMINATION

24.1 This Agreement shall come into force on the Effective Date and shall remain in full force and effect until the End Date unless terminated earlier in accordance with its terms (the "**Term**").

24.2 Without prejudice to its other rights and remedies, either Party may, by written notice to the other Party, terminate this Agreement immediately if:

- (A) that other Party commits a material breach of this Agreement and, where such breach is capable of remedy, fails to remedy the same within thirty (30) days after receipt of a written notice from the terminating Party giving particulars of the breach and requiring it to be remedied; or
- (B) any step, application, order, proceeding or appointment is taken or made by or in respect of that other Party for a distress, execution, composition or arrangement with creditors, winding up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if that other Party is unable to pay its debts or if any event occurs which, under the applicable law of any jurisdiction to which it is

subject, has an effect similar to that of any of the events referred to in this Clause 24.2(B).

24.3 Without prejudice to Clause 24.2 above, by notice in writing to the Supplier at any time, Prestige may terminate this Agreement in part and solely to the extent of the individual Product or Products affected, if:

- (A) Prestige or any of its Affiliates disposes of its rights (including, without limitation, any Intellectual Property, Product Licences, or other property relating to the Product) with respect to such Product;
- (B) significant or repeated quality issues arise in relation to the Manufacture of such Product under this Agreement which have a material effect on the supply of such Product hereunder, including but not limited to that Product:
 - (i) not being Manufactured to the relevant Specifications and/or the requirements of the Manufacturing and/or Product Licence;
 - (ii) containing any new or unknown impurities, including new or unknown related substances;
 - (iii) containing any known impurities over the limits referred to in the Quality Agreement and/or in such quantity that is not permitted by Applicable Laws;
 - (iv) being found to be potentially hazardous; and/or
 - (v) being found to cause adverse reactions in a patient or consumer;
- (C) regulatory issues arise, including, without limitation, the withdrawal of the Product Licence or Manufacturing Licence, or there are other regulatory considerations which materially affect the Manufacture and/or sale of such Product;
- (D) such Product is withdrawn from the market for safety, quality or regulatory reasons;
- (E) the Supplier (or its Affiliates) in any way challenges Prestige's ownership of, or right to use, the Prestige Intellectual Property or infringes Prestige's Intellectual Property (including without limitation, using such Intellectual Property other than in accordance with the licence granted in Clause 3.3) with respect to such Product; and/or
- (F) there is a material disruption in the supply of such Product.

24.4 Without prejudice to Clauses 24.2 and 24.3 above or any accrued obligations, Prestige shall be entitled to withdraw any Product from the market at any time during this Agreement such that Prestige shall be released from all future obligations or liabilities relating to such Product during such period of withdrawal.

25. CONSEQUENCES OF TERMINATION; DESIGNATED EQUIPMENT

25.1 Termination of this Agreement in whole or in part, however caused, shall be without prejudice to any rights or liabilities of either Party accrued at the date of termination and shall not affect the operation of Clauses 1

(Interpretation), 15 (Quality Assurance), 16 (Documentation and Reports), 17 (Customer Complaints and Recall Procedure), 21 (Warranty; Indemnity; Limitation of Liability), 25 (Consequence of Termination), 29 (Confidentiality), 40 (Choice of Governing Law) and 41 (Jurisdiction) or any other provisions of this Agreement which are intended to continue to have effect after it has come to an end.

25.2 Without prejudice to Clause 25.4 below, upon termination of this Agreement (in whole) by Prestige for any reason, the following shall apply:

- (A) at Prestige's option, all undelivered Firm Orders may be cancelled;
- (B) on demand from Prestige, the Supplier shall (or shall procure that its Affiliates will) notify Prestige in writing of the quantity and description of finished Product, semi-finished Product and Materials held by the Supplier (or its Affiliates) as at the date of termination;
- (C) Prestige may, at its option, place an order with the Supplier:
 - (i) to purchase any finished Product (which meets the Specifications and otherwise complies with this Agreement) at the Price current at the termination date;
 - (ii) to purchase any semi-finished Product at such pro-rata amount of the Price applicable to such semi-finished Product;
 - (iii) to complete the Manufacture of any semi-finished Product in accordance with this Agreement and supply the same to Prestige at the Price current at the termination date; and/or
 - (iv) to purchase any Materials at cost price;
- (D) the terms and conditions of this Agreement shall apply to any order placed by Prestige in accordance with Clause 25.2(C); and
- (E) at Prestige's request and subject always to Applicable Laws and the EHS Standards, the Supplier shall (or shall procure that its Affiliates will), at their cost, destroy any finished Product and semi-finished Product that is not purchased by Prestige in accordance with Clause 25.2(C) above.

25.3 Without prejudice to Clause 25.4 below, upon termination of this Agreement by the Supplier in accordance with Clause 24.2, the following shall apply:

- (A) unless the Parties otherwise agree, all undelivered Firm Orders shall be deemed to be cancelled;
- (B) the Supplier shall (or shall procure that its Affiliates will) notify Prestige in writing of the quantity and description of finished Product, semi-finished Product and Materials held by the Supplier (or its Affiliates) as at the date of termination;
- (C) at Prestige's option, the Supplier shall (or shall procure that its Affiliates will) either destroy such finished Product or semi-finished Product at Prestige's cost or Prestige shall place an order with the Supplier

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to purchase:

(i) any finished Product (which meets the Specifications and otherwise complies with this Agreement) at the Price current at the termination date;

(ii) any semi-finished Product at such pro-rata amount of the Price applicable to such semi-finished Product; and/or

(iii) any Materials at cost price,

in each case provided that Prestige shall not be obliged to purchase any such finished or part finished Product or Materials in excess of the lesser of: (1) the amount required to meet the Firm Orders current at the date of termination; or (2) the amount held by the Supplier (or its Affiliates) on the date when notice of termination was served; and

(D) the terms and conditions of this Agreement shall apply to any order placed by Prestige in accordance with Clause 25.3 (C).

25.4 Without prejudice to Clauses 25.2 and 25.3 above, upon termination (in whole) or expiry of this Agreement for any reason:

(A) the licence granted in Clause 3.3 shall terminate and the Supplier shall not (and shall procure that none of its Affiliates) make any use for any purpose whatsoever of any Prestige Intellectual Property (including any Improvements as described in Clauses 20.13 and 20.14) or any information contained in the Quality Agreement except to the extent necessary to fulfil any Firm Order or order placed by Prestige in accordance with Clauses 25.2(C) or 25.3(C); and

(B) at Prestige's request, the Supplier (and its Affiliates) shall return and/or destroy all copies of documents documenting the Know-how and/or information of a technical nature relating to the Products and their Manufacture supplied by, or on behalf of, Prestige or its Affiliates to the Supplier (or its Affiliates).

For the avoidance of doubt nothing herein shall prevent the Supplier (or its Affiliates) from retaining information or documents to the extent they relate to Know-how or information of a technical nature:

(i) owned by the Supplier (or its Affiliates) but licensed to Prestige pursuant to the Sale Agreement; and/or

(ii) licensed to the Supplier (or its Affiliates) by Prestige,

subject in each case to the terms of any such licence.

25.5 Upon any partial termination of this Agreement in accordance with Clause 24.3, the provisions of Clauses 25.2 and 25.4 above shall apply in respect of the affected Products.

25.6 No compensation, whether for loss of profit or any other reason whatsoever, shall be payable to either Party

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arising from the termination or expiry of this Agreement.

Designated Equipment

25.7 Subject to the terms of Clauses 25.8 to 25.13:

- (A) Prestige has an option to purchase the Designated Equipment upon expiry or termination of this Agreement; and
- (B) [***],

in each case, at a price equal to [***] of the Designated Equipment at the Purchase Date.

25.8 At any time, but no later than [***], following the Effective Date (the "**Option Period**"):

- (A) Prestige may notify the Supplier in writing that it wishes to exercise the Right to Buy (a "**Right to Buy Notification**"); and/or
- (B) The Supplier may notify Prestige in writing that it intends, in its sole discretion, to [***] at the [***] Manufacturing Site upon expiry of this Agreement [***] (a "**[***] Notification**").

25.9 In the event Prestige provides the Supplier with a Right to Buy Notification (pursuant to Clause 25.8(A) above) the following process shall apply:

- (A) As part of such Right to Buy Notification, Prestige shall provide confirmation of:
 - (i) the proposed Purchase Date (being the date of expiry of this Agreement (subject to paragraph (G) below)) of the Designated Equipment and (provided that such date is the same as or later than the Purchase Date) the proposed date of transfer of the Designated Equipment from the [***] Manufacturing Site to a different site, as nominated by Prestige; and
 - (ii) whether it wishes to inspect the Designated Equipment (the "**First Notification**");
- (B) within [***] of the First Notification the Supplier shall confirm in writing to Prestige (or its nominated Affiliate) the [***] on the proposed Purchase Date pursuant to sub-Clause 25.9(A)(i) above. In the event of any dispute with regard to such [***] Prestige (or its nominated Affiliate) shall be entitled to request and the Supplier will procure written confirmation of [***] and any related calculation by the Supplier's independent auditors;
- (C) should Prestige wish to inspect the Designated Equipment, Prestige (or its nominated Affiliate) shall have the right to fully inspect the Designated Equipment at the Manufacturing Site where the Designated Equipment is located within Working Hours on such a date within [***] of the First Notification as shall be agreed by the Parties and the Supplier shall fully cooperate in facilitating such inspection, including granting access to the Designated Equipment and relevant information with regard to the condition and performance of the Designated Equipment;

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- (D) within [***] of the First Notification (or if later within [***] of Prestige (or its nominated Affiliate) completing its inspection pursuant to sub-clause 25.9(C)), Prestige (or its nominated Affiliate) shall confirm to the Supplier in writing whether it wishes to proceed with the purchase of the Designated Equipment (the “**Second Notification**”);
- (E) within [***] of the Second Notification Prestige (or its nominated Affiliate) and the Supplier shall cooperate in good faith to prepare and execute appropriate transfer documentation and invoices as required and customary in the relevant jurisdiction of the Manufacturing Site where the Designated Equipment is located to give effect to the purchase and transfer of the Designated Equipment to Prestige (or its nominated Affiliate). Such documentation shall, among other things, provide that:
 - (i) Prestige shall be responsible for arranging and paying for the cost of decommissioning, disassembling, removing and transporting the Designated Equipment from the Manufacturing Site;
 - (ii) For the avoidance of doubt, the price of the Designated Equipment shall be equal to [***] as at the Purchase Date; and
 - (iii) Payment for the Designated Equipment shall take place upon the Purchase Date of the Designated Equipment or promptly thereafter; and
- (F) The Parties shall, taking into account the principles set out in Clause 25.15(A) to (C) inclusive, use commercially reasonable endeavours to agree a date and plan for the physical transfer the Designated Equipment (allowing for, amongst other things, decommissioning, disassembly, removal and transportation) from the [***] Manufacturing Site to a site nominated by Prestige within a prompt and reasonable timescale after the Purchase Date.
- (G) In the event this Agreement terminates prior to its date of expiry, for any reason, after Prestige has provided a Second Notification confirming that it wishes to proceed with the purchase of the Designated Equipment, the Purchase Date shall be deemed to be the date of termination (or such other date as soon as reasonably practicable thereafter as the Parties shall agree (acting reasonably)) and the provisions in sub-Clauses 25.9(E) and (F) above shall continue to apply but Clause 25.15 shall not apply.

25.10 In the event that the Supplier provides a [***] Notification pursuant to Clause 25.8(B) above, and regardless of whether:

- (A) Prestige has already exercised its rights under Clause 25.9 above by way of sending a First Notification, but has not confirmed its decision to purchase by way of a Second Notification; or
- (B) Prestige has already confirmed, by means of the Second Notification, that it does not wish to proceed with the purchase of the Designated Equipment,

Prestige shall no longer be entitled to refuse to purchase the Designated Equipment.

25.11 Upon the Supplier providing Prestige with a [***] Notification, the following process shall apply:

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- (A) As part of such [***] Notification, the Supplier shall provide confirmation of the proposed Purchase Date of the Designated Equipment (being the date of expiry of this Agreement (subject to paragraph (G) below));
- (B) within [***] of sending the [***] Notification, the Supplier shall confirm in writing to Prestige (or its nominated Affiliate) the [***] on the proposed Purchase Date. In the event of any dispute with regard to [***] Prestige (or its nominated Affiliate) shall be entitled to request and the Supplier will procure written confirmation of [***] and related calculation by the Supplier's independent auditors;
- (C) should Prestige wish to inspect the Designated Equipment, Prestige (or its nominated Affiliate) shall have the right to fully inspect the Designated Equipment at the Manufacturing Site where the Designated Equipment is located within Working Hours on such a date within [***] of the [***] Notification as shall be agreed by the Parties and the Supplier shall fully cooperate in facilitating such inspection, including granting access to the Designated Equipment and relevant information with regard to the condition and performance of the Designated Equipment;
- (D) within [***] of the completion of the inspection referred to in sub-Clause 25.11(C) above, Prestige (or its nominated Affiliate) and the Supplier shall cooperate in good faith to prepare and execute appropriate transfer documentation and invoices as required and customary in the relevant jurisdiction of the Manufacturing Site where the Designated Equipment is located to give effect to the purchase and transfer of the Designated Equipment to Prestige (or its nominated Affiliate) Such documentation shall, among other things, provide that:
 - (i) Prestige shall be responsible for arranging and paying for the cost of decommissioning, disassembling, removing and transporting of the Designated Equipment from the Manufacturing Site;
 - (ii) for the avoidance of doubt, the price of the Designated Equipment shall be equal to [***] as at the Purchase Date; and
 - (iii) Payment for the Designated Equipment shall take place upon the Purchase Date of the Designated Equipment or promptly thereafter; and
- (E) The Parties shall, taking into account the principles set out in Clause 25.15(A) to (C) inclusive, use commercially reasonable endeavours to agree a date and plan for the physical transfer the Designated Equipment (allowing for amongst other things decommissioning, disassembly, removal and transportation) from the [***] Manufacturing Site to a site nominated by Prestige within a prompt and reasonable timescale after the Date of Purchase; and
- (F) In the event this Agreement terminates prior to its date of expiry, for any reason, after Supplier has provided a [***] Notification, the Purchase Date shall be deemed to be the date of termination (or such other date as soon as reasonably practicable thereafter as the Parties shall agree (acting reasonably)) and the provisions in sub-Clause 25.11(D) and (E) above shall continue to apply but Clause 25.15 shall not apply.

25.12 If, upon expiry of the Option Period, neither Party has provided a notification as set out in Clause 25.8 above, subject to any terms of any further agreement between the Parties including, without limitation, with respect

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to extending the Term of this Agreement or the length of the Option Period:

- (A) Prestige may exercise the Right to Buy only upon termination of this Agreement as a result of a breach by the Supplier of its obligations hereunder, in which case, the process set out in Clause 25.9 above shall apply in its entirety and with the same time periods for the various actions required, as if the date of the Right to Buy Notification is replaced by the date of such termination of this Agreement; and
- (B) [***].

25.13 Following the exercise of either Party's rights under Clauses 25.8 to 25.12 above, and to come into effect on the Purchase Date of the Designated Equipment, the Supplier shall grant Prestige a perpetual, non-exclusive, assignable, sublicensable, royalty-free licence to use any and all of the Intellectual Property owned by the Supplier in respect of the Designated Equipment solely to the extent necessary to operate the Designated Equipment and solely for the purposes of producing the applicable Products (the "**Designated Equipment Intellectual Property**") in substantially the same manner and in such geographical territories as the Supplier has used the Designated Equipment Intellectual Property prior to the purchase of the Designated Equipment by Prestige. For the avoidance of doubt, the Supplier shall, at all times, retain full ownership and title to the Designated Equipment Intellectual Property.

25.14 If any piece of Designated Equipment, on inspection by Prestige (or its nominated Affiliate) pursuant to Clause 25.9(C) and Clause 25.11(C), is found by Prestige (acting reasonably) to not be in reasonable working condition such that it is materially defective ("**Defective Designated Equipment**"), Prestige (or its nominated Affiliate) may, by giving notice to the Supplier as part of the Second Notification, exclude such Defective Designated Equipment from the Designated Equipment to be transferred pursuant to Clause 25.9 and Clause 25.11 and upon execution of this right, reference to Designated Equipment in this Agreement shall thereafter be construed accordingly.

25.15 The Parties agree that the transfer plan for the Designated Equipment pursuant to Clause 25.9 and Clause 25.11 shall, if commercially practicable and necessary to maintain continuity of supply for Prestige and subject to the Parties agreeing a mechanism and estimate (provided in good faith) for determining any compensation payable to the Supplier under Clause 25.15(A), provide for the transfer of the Designated Equipment on a phased basis [***] provided that in such case the phased plan addresses and conforms with the principles set out in Clause 25.15(A) to (C) inclusive below:

- (A) the Supplier shall be compensated for any reduction in production volumes arising as a result of the transfer of certain of the Designated Equipment prior to the proposed Purchase Date having offset any increase in production volumes for the Supplier resulting from stock builds agreed to cover any period after expiry of this Agreement;
- (B) full ownership and title to Designated Equipment transferred on a phased basis shall be transferred to Prestige on the removal of such Designated Equipment from the [***] Manufacturing Site; and
- (C) with regard to any Designated Equipment transferred on a phased basis Prestige shall pay to the Supplier an amount equal to [***] on or before the date of removal of such Designated Equipment from the [***] Manufacturing Site,

and for the avoidance of doubt [***] of any such Designated Equipment shall continue to be [***] at the proposed

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Purchase Date (i.e. the date of expiry or termination of this Agreement).

26. TECHNOLOGY TRANSFER

Without prejudice to the Supplier's rights under this Agreement, Prestige may in its sole discretion and at any time elect to implement the transfer of Know-how (save to the extent such Know-how comprises Intellectual Property that is made solely by the Supplier and/or its Affiliates and which is capable of being used independently of Prestige's Intellectual Property and which shall remain the property of the Supplier (or its Affiliates) pursuant to Clause 20.10) relating to the Manufacture of the Products ("**Manufacturing Know-How**") from the Supplier (or its Affiliates) to Prestige or one of Prestige's Affiliates or a designated contract manufacturer by providing written notification to the Supplier at any time. Following such notice the Supplier (or its Affiliates) shall fully cooperate with Prestige with regard to the transfer and provide all necessary, reasonably required and customary assistance to Prestige to enable Prestige to complete the transfer in a timely and effective manner. Without limitation to the foregoing the following provisions shall apply in the event of a transfer contemplated by this Clause 26:

- (A) upon notice of transfer under this Clause 26 Prestige and the Supplier shall (or shall procure that its Affiliates will) agree a transfer plan which addresses, if required, reduction of production volumes and draw down of any Materials, any remaining Product and all other issues requiring consideration for the completion of such transfer in a timely and effective manner;
- (B) the Supplier shall (or shall procure that its Affiliates will) provide all such reasonable assistance with respect to the transfer of processes equivalent to those employed by the Supplier (or its Affiliates) during the Term of this Agreement (i.e., on a "like-for-like" basis);
- (C) Prestige will be responsible for all activities related to the development and preparation of data for use in regulatory submissions in connection with such transfer and the Supplier shall (or shall procure that its Affiliates will) without charge provide Prestige with copies of all documentation held by the Supplier (or its Affiliates) and necessary or otherwise reasonably requested by Prestige for such purpose;
- (D) the Supplier (and its Affiliates) shall reasonably co-operate with Prestige in transferring the Manufacturing Know-How including making available to Prestige appropriate employees of the Supplier (or its Affiliates) who are engaged in the Manufacture of Product to provide information and guidance for the transfer process, including consulting services, to the extent reasonably necessary for the completion of the transfer of the Manufacturing Know-How in a timely and efficient manner; and
- (E) Prestige shall pay the reasonable and properly incurred actual incremental costs of the Supplier and its Affiliates in providing Prestige with assistance pursuant to sub-Clauses (B) and (D) above.

Notwithstanding the transfer of any Product under this Clause 26, the Supplier shall remain fully liable under the terms of this Agreement (including liability to any Governmental Entity) for all Products which the Supplier (or its Affiliates) has Manufactured for Prestige under the terms of this Agreement.

27. FORCE MAJEURE

27.1 A Party shall not in any circumstances be liable to the other Party for any loss of any kind whatsoever by reason

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of any failure or delay in the performance of its obligations hereunder to the extent resulting from Force Majeure.

27.2 If a Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other Party. If the Force Majeure continues for more than sixty (60) days after the day on which the Force Majeure starts, then the other Party may engage at its own cost such third parties as it wishes to provide alternative services and/or may terminate this Agreement in whole or in relation to the part affected by the Force Majeure by giving not less than ten (10) days' written notice to the other Party.

28. TAX

28.1 All amounts payable pursuant to this Agreement [***] in respect of Tax save as may be required by law.

28.2 If any deductions or withholdings are required by law to be made from any amount as mentioned in Clause 28.1 above, the paying Party shall pay such sum as will, after all such deductions or withholdings have been made (including any deductions or withholdings from any such additional sum), leave the receiving Party with the same amount as it would have been entitled to receive in the absence of any requirement to make any deductions or withholdings.

28.3 If the paying Party makes an increased payment pursuant to Clause 28.2 in respect of which the receiving Party receives a credit against, relief or remission for, or repayment of, any Tax, the receiving Party shall reimburse the paying Party such amount as shall leave the receiving Party in the same after tax position as it would have been in had no such deduction or withholding been required to be made by the paying Party.

29. CONFIDENTIALITY

29.1 All Confidential Information disclosed pursuant to this Agreement by a Disclosing Party shall remain the Disclosing Party's property. Each Receiving Party shall procure that its and its Affiliates' employees, representatives, officers, contractors and agents shall keep confidential during and after the term of this Agreement all Confidential Information of the Disclosing Party received or acquired by it and shall not use or disclose the same to any third party without the Disclosing Party's prior written consent. Each Receiving Party shall not without the prior written consent of the Disclosing Party publish or permit to be published any information whatsoever relative to this Agreement including the name of the other party. For the avoidance of doubt, a Party shall be entitled to share information relating to this Agreement with their Affiliates, representatives, officers, employees, contractors, sub-contractors, or advisors, banking institutions, financial advisors, agents and distributors provided that the necessary confidentiality undertakings have been entered into and to the extent necessary to perform their obligations hereunder, provided, however, that in the event of such disclosure that such Receiving Party shall be fully liable for ensuring that their and their Affiliates', representatives, officers, employees, contractors, sub-contractors, advisors banking institutions, financial advisors, agents and distributors comply with the confidentiality obligations set out in this Clause 29.

29.2 The duty of confidentiality under this Clause 29 and owed in relation to the Confidential Information shall continue for a period of [***] following the expiry or termination of this Agreement, but shall not extend to any information which:

(A) the other Party can show by competent proof that it knew prior to disclosure;

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- (B) is or comes into the public domain other than in breach of this Clause;
- (C) is disclosed to the other Party by a third party having the right to do so;
- (D) is or has been independently developed by employees of the other Party who had no knowledge of such information described in Clause 29.1 and the Confidential Information disclosed; or
- (E) is required to be disclosed by law or to comply with the requirements of a Regulator or other Governmental Entity having jurisdiction over the Disclosing Party or the contents of this Agreement, provided that such information shall be disclosed only after the Party from whom disclosure is required has used its reasonable endeavours (to the extent practicable and permitted by law) to resist making such disclosure and has (to the extent practicable and permitted by law) given the other Party reasonable advance notice of the required disclosure and reasonable opportunity to challenge the same.

29.3 Upon termination of this Agreement, each Party shall at the other Party's direction, return or destroy all of the other Party's Confidential Information which it has in its possession or under its control, save as for one (1) confidential copy that may be retained in a Party's confidential files solely for purposes of monitoring compliance with the terms hereof and complying with its corporate governance policies.

30. REMEDIES AND WAIVERS

30.1 No delay or omission on the part of either Party to this Agreement in exercising any right, power or remedy provided by law or under this Agreement or any other documents referred to in it shall:

- (A) impair such right, power or remedy;
- (B) operate as a waiver thereof; or
- (C) operate as an affirmation of this Agreement.

30.2 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy except where expressly stated herein.

30.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law unless otherwise stated herein.

31. NO PARTNERSHIP

Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute, or be deemed to constitute an agency relationship or a relationship between the Parties of a partnership, unincorporated association, joint venture or other co-operative entity.

32. ENTIRE AGREEMENT

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- 32.1 This Agreement and any other documents entered into pursuant to this Agreement constitute the whole and only agreement between the Parties relating to these transactions, and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto.
- 32.2 Each Party acknowledges that in entering into this Agreement, the Sale Agreement, the Transitional Services Agreement and any other documents entered into pursuant to this Agreement, it is not relying on, and has not been induced to enter into this Agreement, the Sale Agreement, the Transitional Services Agreement or any other documents entered into pursuant to this Agreement on the basis of, any pre-contractual statement made or given by any other Party or any other person, whether or not in writing, prior to the date hereof, which is not expressly set out in this Agreement or any other such document.
- 32.3 Except in the case of fraud, no Party shall have any right of action against any other Party to this agreement arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in this Agreement, the Sale Agreement, the Transitional Services Agreement, and any other documents entered into pursuant to this Agreement.
- 32.4 For the purposes of this Clause, "**pre-contractual statement**" means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of this Agreement made or given by any person at any time prior to this Agreement becoming legally binding.
- 32.5 This Agreement may only be varied by a document signed by each of the Parties and expressed to be a variation to this Agreement.

33. ASSIGNMENT

33.1 The Supplier may assign and delegate its rights and duties hereunder (in whole or in part) to:

- (A) any Affiliate or subsidiary of the Supplier;
- (B) any party or entity which acquires substantially all of the business or assets of the Supplier; and/or
- (C) any party or entity which acquires substantially all of the business or assets of one or more Manufacturing Site to the extent that such rights and duties relate to any such Manufacturing Site(s),

without obtaining the consent of Prestige or its Affiliates if the Supplier guarantees to Prestige the performance of the acquiring party and the acquiring party expressly assumes the assignment of the Supplier's obligations hereunder.

33.2 Prestige may assign and delegate its rights and duties hereunder (in whole or in part) to:

- (A) any Affiliate or subsidiary of Prestige;
- (B) any party or entity which acquires substantially all of the business or assets of Prestige; and/or

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(C) any party or entity which acquires substantially all of the rights in any Products to the extent that such rights and duties relate to such Product,

without obtaining the consent of the Supplier or its Affiliates if Prestige guarantees to the Supplier the performance of the acquiring party and the acquiring party expressly assumes the assignment of Prestige's obligations hereunder.

33.3 Without prejudice to the provisions of Clause 33.2 or any other provisions of this Agreement, Prestige shall be entitled to grant security over its rights, or assign its rights by way of security, under this Agreement (whether in whole or in part) for the purposes of the financing (whether in whole or in part) raised by Prestige in relation to the transactions contemplated by this Agreement PROVIDED THAT any assignee of any such rights shall not be entitled to further assign them (in whole or in part) other than by way of enforcement of such security.

34. FURTHER ASSURANCE

The Parties undertake to perform all such acts and do all such other things as may be incidental to, or necessary to give effect to, the transactions contemplated by this Agreement.

35. NOTICES

35.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing.

35.2 Any such notice or other communication shall be addressed as provided in Clause 35.3 and, if so addressed, shall be deemed to have been duly given or made as follows:

(A) if sent by personal delivery, upon delivery at the address of the relevant Party;

(B) if delivered by courier, on delivery;

(C) if sent by first class post, two (2) Business Days after the date of posting;

(D) if sent by fax, when sent,

provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside Working Hours, such notice or other communication shall be deemed to be given or made at the start of Working Hours on the next Business Day.

35.3 The relevant addressee, address and fax number of each Party for the purposes of this Agreement, subject to Clause 35.4, are:

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<u>Name of Party</u>	<u>Address</u>	<u>Fax No.</u>
<u>For Prestige:</u>		
For the attn. of	Ron Lombardi, Chief Financial Officer 90 North Broadway Irvington NY 10533 United States of America	[***]
With a copy to:	Eric Klee, Secretary and General Counsel 90 North Broadway Irvington NY 10533 United States of America	[***]
<u>For the Supplier:</u>		
For the attn. of	Site Director GlaxoSmithKline [***] USA	[***]
For the attn. of	Site Director GlaxoSmithKline [***] USA	[***]
With a copy to:	Vice President, Legal Operations, Global Manufacturing and Supply GlaxoSmithKline 5, Moore Drive PO Box 13398 Research Triangle Park NC 27709-3398 USA	[***]

35.4 A Party may notify the other Party to this Agreement of a change to its name, relevant addressee and address for the purposes of Clause 35.3 provided that such notification shall only be effective on:

- (A) the date specified in the notification as the date on which the change is to take place; or
- (B) if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date falling five (5) clear Business Days after notice of any such change has been given.

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35.5 For the avoidance of doubt, the Parties agree that the provisions of this Clause shall not apply in relation to the service of any writ, summons, order, judgment or other document relating to or in connection with any Proceedings.

36. COSTS AND EXPENSES

Except as otherwise stated in this Agreement, each Party shall pay its own costs and expenses in relation to the negotiations, preparation, execution and carrying into effect of this Agreement and all other documents entered into pursuant to, or in connection with, it.

37. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and by the Parties to it on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

38. INVALIDITY

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair: (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

39. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

39.1 Certain provisions of this Agreement confer benefits on the Parties' respective Affiliates and, subject to the remaining terms of this Clause 39, are intended to be enforceable by each such entity (a "Third Party") by virtue of the Contracts (Rights of Third Parties) Act 1999.

39.2 The Parties to this Agreement do not intend that any term of this Agreement, other than those specifically referred to in Clause 39.1, shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a Party to this Agreement.

39.3 Notwithstanding Clause 39.1, this Agreement may be varied in any way and at any time by the Parties to this Agreement without the consent of any Third Party.

40. CHOICE OF GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English law. Any matter, claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, is to be governed by and determined in accordance with English law.

41. JURISDICTION

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- 41.1 The courts of England are to have jurisdiction to settle any dispute, whether contractual or non-contractual, arising out of or in connection with this Agreement. Any Proceedings shall be brought only in the courts of England.
- 41.2 Each Party waives (and agrees not to raise) any objection, on the ground of forum non conveniens or on any other ground, to the taking of Proceedings in the courts of England. Each Party also agrees that a final non-appealable judgment against it in Proceedings brought in England shall be conclusive and binding upon it and may be enforced in any other jurisdiction.
- 41.3 Each Party irrevocably submits and agrees to submit to the jurisdiction of the English courts.

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SCHEDULE 1 - PRODUCTS AND PRICES

Please see attached

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Manufacturing Site	Market Destination for Commercialisation	SKU Item Number	Type of Product	Brand and Description of Item	Item MOQ	MOQ in cases	Lead Time from Firm Order	Price Yr 1	Price Yr 2	Price Yrs 3 & 4
***	USA	***	***	***	***	***	***	***	***	***
***	USA	***	***	***	***	***	***	***	***	***
***	USA	***	***	***	***	***	***	***	***	***
***	USA	***	***	***	***	***	***	***	***	***
***	USA	***	***	***	***	***	***	***	***	***
***	USA	***	***	***	***	***	***	***	***	***
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***	USA	***	***	***	***	***	***	***	***	***
***	USA	***	***	***	***	***	***	***	***	***

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[***]	USA	[***]	[***]	[***]	[***]	[***]	[***]	[***]	[***]	[***]
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SCHEDULE 2 – AGREED FORM QUALITY AGREEMENT

Please see attached

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SCHEDULE 3 - KEY PERFORMANCE INDICATORS

KPI	TYPE	TARGET	MEASUREMENT PERIOD
[***]	Supply	[***]	Monthly
[***]	Quality	[***]	Monthly
[***]	Quality	[***]	Monthly
[***]	Quality	[***]	Monthly
[***]	Quality	[***]	Monthly

Where:

[***]

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SCHEDULE 4 - RECORDS RETENTION

<u>Description of Document(s)</u>	<u>Retention Period</u>
<u>Manage the Organisation</u>	
Accounting records	[***]
Audit records	[***]
Business continuity planning records	[***]
Contracts/Agreements	[***]
EHS records	[***]
Employee health records	[***]
Import/Export records	[***]
Insurance records	[***]
Security investigation records	[***]
Manufacture Products	
Audit records – GMP regulatory	[***]
Batch related records – Active pharmaceutical Ingredients (API)- with expiration dates	[***]
Batch related records – Active pharmaceutical Ingredients (API)- with retest dates	[***]
Batch related records – Intermediate product, Bulk product, Filled product, and Finished product- With expiration dates	[***]

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Batch related records – Intermediate product, Bulk product, Filled product, and Finished product- With no expiration dates	[***]
Computer System Documentation- (regulated) manufacturing applications/systems	[***]
Controlled drugs records	[***]
Engineering and specification records	[***]
Manufacturing Facility (premises, equipment, utilities) validation records	[***]
Manufacturing process validation records	[***]
Master manufacturing specifications and procedure records	[***]
Policies and Procedures	[***]
Product incident management records- Active pharmaceutical Ingredients (API)- with expiration dates	[***]
Product incident management records- Active pharmaceutical Ingredients (API)- with retest dates	[***]
Product incident management records Intermediate product, Bulk product, Filled product, and Finished product- With expiration dates	[***]
Product incident management records Intermediate product, Bulk product, Filled product, and Finished product- With no expiration dates	[***]
Training/Education employee records	[***]

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IN WITNESS whereof the Parties hereto have signed this Agreement on the day and year first before written.

Signed by Eric S. Klee)
for and on behalf of)
MEDTECH PRODUCTS, INC.)/s/ Eric S. Klee.....

Signed by J. LeCouilliard)
for and on behalf of)
GLAXOSMITHKLINE CONSUMER HEALTHCARE L.P.)/s/ J. LeCouilliard.....

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SUBSIDIARIES LIST

Direct and Indirect Subsidiaries
of Prestige Brands Holdings, Inc.

Name	Jurisdiction of Incorporated/Organization
Blacksmith Brands, Inc.	Delaware
Medtech Holdings, Inc.	Delaware
Medtech Products Inc.	Delaware
Prestige Brands Holdings, Inc.	Virginia
Prestige Brands, Inc.	Delaware
Prestige Brands International, Inc.	Virginia
Prestige Brands (UK) Limited	England and Wales
Prestige Personal Care Holdings, Inc.	Delaware
Prestige Personal Care, Inc.	Delaware
Prestige Services Corp.	Delaware
The Cutex Company	Delaware
The Denorex Company	Delaware
The Spic and Span Company	Delaware
Wartner USA B.V.	Netherlands

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-123487) of Prestige Brands Holdings, Inc. of our report dated May 17, 2012 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/S/ PricewaterhouseCoopers LLP

Salt Lake City, Utah
May 17, 2012

CERTIFICATIONS

I, Matthew M. Mannelly, certify that:

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

Date: May 17, 2012

/s/ MATTHEW M. MANNELLY

Matthew M. Mannelly
Chief Executive Officer

CERTIFICATIONS

I, Ronald M. Lombardi, certify that:

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

Date: May 17, 2012

/s/ RONALD M. LOMBARDI

Ronald M. Lombardi
Chief Financial Officer

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Matthew M. Mannelly, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Prestige Brands Holdings, Inc. on Form 10-K for the year ended March 31, 2011, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Annual Report fairly presents, in all material respects, the financial condition and results of operations of Prestige Brands Holdings, Inc.

/s/ **MATTHEW M. MANNELLY**

Name: Matthew M. Mannelly

Title: *Chief Executive Officer*

Date: May 17, 2012

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Ronald M. Lombardi, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Prestige Brands Holdings, Inc. on Form 10-K for the year ended March 31, 2011, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Annual Report fairly presents, in all material respects, the financial condition and results of operations of Prestige Brands Holdings, Inc.

/s/ **RONALD M. LOMBARDI**

Name: Ronald M. Lombardi

Title: *Chief Financial Officer*

Date: May 17, 2012