

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant To Section 13 or 15(d) of
The Securities Exchange Act of 1934

Date of report (Date of earliest event reported): June 1, 2010

MSCI Inc.

(Exact Name of Registrant
as Specified in Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

001-33812

(Commission File Number)

13-4038723

(IRS Employer Identification No.)

88 Pine Street, New York, NY

(Address of Principal Executive Offices)

10005

(Zip Code)

Registrant's telephone number, including area code: **(212) 804-3900**

Not Applicable

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

On June 1, 2010, MSCI Inc. (“**MSCI**” or the “**Company**”) completed its previously announced acquisition of RiskMetrics Group, Inc. (“**RiskMetrics**”). Pursuant to the terms of the Agreement and Plan of Merger dated as of February 28, 2010 (the “**Merger Agreement**”) among the Company, RiskMetrics and Crossway Inc., a wholly owned subsidiary of the Company (“**Crossway**”), Crossway merged with and into RiskMetrics (the “**Merger**”), with RiskMetrics continuing as the surviving corporation and a wholly owned subsidiary of the Company.

Item 1.01. Entry into a Material Definitive Agreement.

On June 1, 2010, the Company entered into a Credit Agreement, dated as of June 1, 2010, among the Company, the lenders party thereto, Morgan Stanley Senior Funding, Inc, as administrative agent for the lenders, and Morgan Stanley & Co. Incorporated, as collateral agent for the lenders (the “**Credit Agreement**”). The Credit Agreement provides for (i) a \$1,275 million senior secured term loan facility that matures in June 2016, the proceeds of which are to be used to repay, in part, the existing credit facilities of the Company and RiskMetrics, to finance, in part, the cash consideration for the Merger and to pay fees and expenses incurred in connection with the repayment and the Merger and (ii) a \$100 million senior secured revolving credit facility, which includes a \$25 million letter of credit subfacility and a \$10 million swingline loan sub facility, that matures in June 2015, the proceeds of which are to be used to fund the working capital requirements of the Company and its subsidiaries and for other general corporate purposes. The Company borrowed \$1,275 million under the term loan facility on June 1, 2010.

Interest

At the option of the Company, borrowings under the Credit Agreement bear interest at either a base rate or at the London Interbank Offered Rate (“**LIBOR**”), plus, in each case, an applicable margin. Swing line loans under the Credit Agreement bear interest at the base rate plus an applicable margin.

Base Rate Option

Interest will be at the base rate plus an applicable margin (which will be based on MSCI’s leverage ratio), calculated on the basis of the actual number of days elapsed in a year of 365 days and payable quarterly in arrears. The base rate will be, for any day, a fluctuating rate per annum equal to the highest of (i) the Federal Funds Rate, as published by the Federal Reserve Bank of New York, plus 1/2 of 1.00%, (ii) the rate of interest quoted for such day in The Wall Street Journal as the “Prime Rate”, as in effect from time to time and (iii) LIBOR, for an interest period of one month beginning on such day, plus 1.00%. However, the base rate may not be less than a floor of 2.50% per annum.

LIBOR Option

Interest will be determined based on interest periods to be selected by MSCI of one, two, three or six months (or, if consented to by all lenders under the applicable credit facilities, nine or 12 months) and will be at an annual rate equal to LIBOR for the corresponding deposits of U.S. dollars, plus the applicable margin (which will be based on MSCI’s leverage ratio). However, (i) prior to the earlier of (x) completion of a successful syndication of the credit facilities and (y) 30 days after the completion of the Merger, the interest period will be one month and (ii) LIBOR will be deemed to be not less than a floor of 1.50% per annum. Interest will be paid at the end of each interest period or, in the case of interest periods

longer than three months, quarterly, and will be calculated on the basis of the actual number of days elapsed in a year of 360 days.

Guarantors and Collateral

All obligations under the credit facilities are (or are required to be) fully and unconditionally guaranteed by (i) each of the Company's existing subsidiaries that was a guarantor under the Company's existing credit agreement dated November 20, 2007, (ii) each of RiskMetrics and RiskMetrics' subsidiaries that was a guarantor under its existing credit facility dated January 11, 2007 and (iii) each subsequently acquired or organized direct or indirect subsidiary that is a wholly owned material domestic subsidiary, subject to limited exceptions. The obligations of the Company and the guarantors under the credit facilities are secured by a lien on all the equity interests of each of the Company's subsidiaries (limited, in the case of foreign subsidiaries, to 65% of the voting equity interests of such first tier foreign subsidiaries) and substantially all other assets of the Company and the Guarantor (subject to certain exceptions).

Covenants and Events of Default

The Credit Agreement contains a number of mandatory prepayment requirements and affirmative and negative covenants. The negative covenants include covenants that, subject to certain exceptions, contain:

- limitations on liens and further negative pledges;
- limitations on (i) debt and (ii) prepayments, redemptions or repurchases of debt;
- limitations on mergers, consolidations and acquisitions;
- limitations on sales, transfers and other dispositions of assets;
- limitations on loans and other investments;
- limitations on dividends and other distributions, stock repurchases and redemptions and other restricted payments;
- limitations on creating new subsidiaries;
- limitations on capital expenditures;
- limitations on restrictions affecting subsidiaries;
- limitations on transactions with affiliates;
- limitations on issuances of disqualified capital stock;
- limitations on changes in (i) the nature of business, (ii) accounting policies or (iii) fiscal periods; and
- limitations on modifications or waivers of material documents.

In addition, the Credit Agreement requires the Company to satisfy a maximum leverage ratio and a minimum interest coverage ratio.

The Credit Agreement also contains certain customary events of default, including relating to non-payment, breach of representations, warranties or covenants, cross-default and cross-acceleration, bankruptcy and insolvency events, invalidity or impairment of loan documentation or collateral, change of control and customary ERISA defaults.

The foregoing description of the Credit Agreement is not intended to be complete and is qualified in its entirety by reference to the full text of the Credit Agreement, a copy of which is filed as Exhibit 2.2 hereto and incorporated by reference herein.

Item 1.02. Termination of a Material Definitive Agreement.

On June 1, 2010, at the effective time of the Merger, in connection with the Company's entry into the Credit Agreement described under Item 1.01 of this Current Report on Form 8-K, the Company terminated its existing credit agreement, dated as of November 20, 2007, among the Company, Bank of America, N.A., as successor to Morgan Stanley Senior Funding, Inc., as administrative agent, collateral agent, swing line lender and L/C issuer and the lenders party thereto (the "**Terminated Credit Facility**"), following the payment in full of all outstanding indebtedness under the Terminated Credit Facility. There were no material early termination penalties incurred as a result of the termination of the Terminated Credit Facility.

On June 1, 2010, at the effective time of the Merger, in connection with the Company's entry into the Credit Agreement described under Item 1.01 of this Current Report on Form 8-K, RiskMetrics terminated its existing first lien credit agreement, dated as of January 11, 2007, among RiskMetrics Group Holdings, LLC, RiskMetrics, Bank of America, N.A., as administrative agent and the lenders party thereto (the "**Terminated RMG Credit Facility**"), following the payment in full of all outstanding indebtedness under the Terminated RMG Credit Facility. There were no material early termination penalties incurred as a result of the termination of the Terminated RMG Credit Facility.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The information set forth above under the heading "Introductory Note" of this Current Report on Form 8-K is incorporated herein by reference.

Under the terms of the Merger Agreement, each outstanding share of RiskMetrics common stock (other than those held by RiskMetrics as treasury stock, by the Company or by any subsidiary of RiskMetrics or the Company or with respect to which appraisal rights have been properly exercised and perfected under Delaware law) was cancelled and converted into the right to receive a combination of 0.1802 of a share of the Company's Class A common stock and \$16.35 in cash, without interest. RiskMetrics stockholders will receive cash for any fractional shares of the Company's Class A common stock that they would otherwise receive in the Merger.

Under the terms of the Merger Agreement, each option to purchase shares of RiskMetrics common stock outstanding as of the effective time of the Merger was converted into an option to purchase the Company's Class A common stock based on an exchange ratio of 0.7260 (rounded down to the nearest whole share). In addition, under the terms of the Merger Agreement, each RiskMetrics restricted share award (which represents a share of RiskMetrics common stock subject to vesting and forfeiture restrictions) outstanding as of the effective time of the Merger was converted into a restricted share award relating to a number of shares of the Company's Class A common stock based on an exchange ratio of 0.7260 (rounded to the nearest whole share). Each converted option and restricted stock award will remain subject to the same terms and conditions (including vesting and forfeiture terms) as were applicable to the relevant RiskMetrics option or restricted share award outstanding immediately prior to the effective time of the Merger.

In connection with the Merger, the Company will issue approximately 12.7 million shares of its Class A common stock and pay an aggregate of approximately \$1.1 billion to former RiskMetrics stockholders in exchange for their shares of RiskMetrics common stock, and reserve for issuance approximately 4.2 million additional shares of the Company's Class A common stock in connection with the conversion of RiskMetrics' outstanding options.

The foregoing summary of the Merger Agreement, and the transactions contemplated thereby, does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Merger Agreement, which is attached as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 1, 2010 and incorporated herein by reference.

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

The information provided in Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 2.03.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

(c) As previously disclosed in the Company's Current Report on Form 8-K filed on May 19, 2010, at the effective time of the Merger, Mr. David M. Obstler, the Chief Financial Officer of RiskMetrics prior to the Merger, became the Company's Chief Financial Officer. Mr. Obstler succeeds Mr. Michael K. Neborak, who ceased to be the Company's Chief Financial Officer at the effective time of the Merger. The information set forth in Item 5.02 of the Company's Current Report on Form 8-K filed on May 19, 2010 is hereby incorporated by reference.

On June 1, 2010, the Compensation Committee of the Board of Directors (the "**Committee**") of the Company approved an increase to the base salary of Mr. Obstler in connection with his appointment as Chief Financial Officer of the Company. His base salary was increased from \$350,000 to \$400,000, effective June 1, 2010.

(e) On June 1, 2010, in connection with the closing of the acquisition of RiskMetrics, the Committee approved grants to Mr. David C. Brierwood (Chief Operating Officer), Mr. C.D. Baer Pettit (Head of Client Coverage), Mr. Gary Retelny (Head of Strategy and Business Development and Chief Administrative Officer) and Mr. Obstler (Chief Financial Officer) of restricted stock unit ("RSU") awards pursuant to the Company's 2010 performance equity program under the 2007 Amended and Restated Equity Incentive Compensation Plan. The awards are intended to be in compliance with the Company's Performance Formula and Incentive Plan, which is intended to comply with Section 162(m) of the Internal Revenue Code. Each grant is contingent upon whether it can be made within the limits for fiscal year 2010 of each individual's Maximum Annual Incentive Award (as defined in the Company's Performance Formula and Incentive Plan) as determined by the Committee.

The number of RSUs awarded to each officer is based on the fair market value of MSCI Class A common stock at the close of business on May 28, 2010 and is determined by dividing the dollar amount set forth opposite each officer's name on the list below by the fair market value of MSCI Class A common stock on May 28, 2010. The fair market value means the closing price at which MSCI Class A common stock traded on the New York Stock Exchange on May 28, 2010, which was \$29.65.

<u>Name</u>	<u>Dollar Amount</u>	<u>RSUs Awarded</u>
David C. Brierwood	\$2,000,000	67,453
C.D. Baer Pettit	\$2,000,000	67,453
Gary Retelny	\$2,000,000	67,453
David M. Obstler	\$1,000,000	33,726

The awards are subject to both time-vesting and performance-vesting requirements. 50% of the RSUs will time-vest on December 1, 2011 and 50% will time-vest on December 31, 2012. The RSUs that have time-vested will performance-vest and be converted to shares of the Company's Class A common stock (within a range of 0% to 200% of the number of RSUs awarded) based on the achievement of certain revenue and adjusted EBITDA performance metrics for a three-year period covering fiscal years 2010, 2011 and 2012. In addition, unvested RSUs will time-vest, but will remain subject to performance-vesting, in the event of the officer's death, disability or termination by the Company without cause. Unvested RSUs will time-vest, and performance-vest based on expected achievement of the performance metrics, in the event of a change in control or termination due to accepting certain governmental positions.

Item 8.01 Other Events

On June 1, 2010, the Company and RiskMetrics jointly issued a press release announcing the completion of the Merger. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Businesses Acquired

(1) The audited consolidated balance sheets of RiskMetrics as of December 31, 2009 and 2008, and the audited consolidated statements of operations and consolidated statements of cash flows of RiskMetrics for the years ended December 31, 2009, 2008 and 2007, and the notes related thereto, are incorporated herein by reference from RiskMetrics' Annual Report on Form 10-K filed on February 24, 2010.

(2) The unaudited condensed consolidated balance sheet as of March 31, 2010, and the unaudited condensed consolidated statements of income and condensed consolidated statements of cash flows for the three months ended March 31, 2010 and March 31, 2009, and the notes related thereto, are incorporated herein by reference from RiskMetrics' Quarterly Report on Form 10-Q filed on May 6, 2010.

(b) Pro Forma Financial Information

The unaudited pro forma condensed combined financial statements of MSCI and RiskMetrics as of and for the three months ended February 28, 2010 and for the year ended November 30, 2009 are filed as Exhibit 99.2 hereto.

(d) Exhibits

2.1 Agreement and Plan of Merger dated as of February 28, 2010 among RiskMetrics Group, Inc., MSCI Inc. and Crossway Inc. (incorporated by reference to Exhibit 2.1 of MSCI Inc.'s Current Report on Form 8-K, filed on March 1, 2010).

2.2 Credit Agreement dated as of June 1, 2010 among MSCI Inc., as the Borrower, Morgan Stanley Senior Funding, Inc., as Administrative Agent, Morgan Stanley & Co. Incorporated, as Collateral Agent, Morgan Stanley Senior Funding, Inc., as Swing Line Lender and L/C Issuer and the other lenders party thereto.

99.1 Joint Press Release of MSCI Inc. and RiskMetrics Group, Inc. dated June 1, 2010.

99.2 Unaudited pro forma condensed combined financial statements of MSCI Inc. and RiskMetrics Group, Inc. as of and for the three months ended February 28, 2010 and for the year ended November 30, 2009.

SIGNATURES

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

MSCI Inc.

Date: June 7, 2010

By: /s/ Henry Fernandez

Name: Henry Fernandez

Title: Chief Executive Officer

[Signature Page to 8-K regarding Merger Closing]

INDEX TO EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
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- | | |
|------|---|
| 2.1 | Agreement and Plan of Merger dated as of February 28, 2010 among RiskMetrics Group, Inc., MSCI Inc. and Crossway Inc. (incorporated by reference to Exhibit 2.1 of MSCI Inc.'s Current Report on Form 8-K, filed on March 1, 2010). |
| 2.2 | Credit Agreement dated as of June 1, 2010 among MSCI Inc., as the Borrower, Morgan Stanley Senior Funding, Inc., as Administrative Agent, Morgan Stanley & Co. Incorporated, as Collateral Agent, Morgan Stanley Senior Funding, Inc., as Swing Line Lender and L/C Issuer and the other lenders party thereto. |
| 99.1 | Joint Press Release of MSCI Inc. and RiskMetrics Group, Inc. dated June 1, 2010. |
| 99.2 | Unaudited pro forma condensed combined financial statements of MSCI Inc. and RiskMetrics Group, Inc. as of and for the three months ended February 28, 2010 and for the year ended November 30, 2009. |

CREDIT AGREEMENT

Dated as of June 1, 2010

among

MSCI INC.,
as the Borrower,MORGAN STANLEY SENIOR FUNDING, INC.,
as Administrative Agent,MORGAN STANLEY & CO. INCORPORATED,
as Collateral Agent,MORGAN STANLEY SENIOR FUNDING, INC.,
as Swing Line Lender and L/C Issuer,

and

The Other Lenders Party Hereto
_____MORGAN STANLEY SENIOR FUNDING, INC.,
as Sole Lead Arranger and Sole Book-Runner,CREDIT SUISSE SECURITIES (USA) LLC,
as Syndication Agent,

and

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

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CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of June 1, 2010, among MSCI Inc., a Delaware corporation (the "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), MORGAN STANLEY SENIOR FUNDING, INC., as Administrative Agent, Swing Line Lender and L/C Issuer, and MORGAN STANLEY & CO. INCORPORATED, as Collateral Agent.

PRELIMINARY STATEMENTS:

Pursuant to the Agreement and Plan of Merger dated February 28, 2010 (together with all exhibits, schedules, documents, agreements and instruments executed and delivered in connection therewith, as the same may be amended or modified in accordance with the terms and provisions thereof, the "Acquisition Agreement") among the Borrower, Crossway Inc., a Delaware corporation and a wholly-owned Subsidiary of the Borrower ("Merger Sub"), and RiskMetrics Group, Inc., a Delaware corporation (the "Acquired Business"), Merger Sub will merge with and into the Acquired Business (the "Acquisition"), with the Acquired Business surviving such merger as a wholly-owned Subsidiary of the Borrower.

The proceeds of the borrowings hereunder will be used to fund, in part, the Transaction and provide working capital for, and for other general corporate purposes, including Permitted Acquisitions, of, the Borrower and its Subsidiaries.

The Borrower has requested (a) the Lenders to extend credit in the form of (i) Term Loans on the Closing Date, in an aggregate principal amount not in excess of \$1,275,000,000 and (ii) Revolving Loans at any time and from time to time prior to the Maturity Date of the Revolving Credit Facility, in an aggregate principal amount at any time outstanding not in excess of \$100,000,000 and (b) the L/C Issuer issue Letters of Credit for the account of the Borrower or its Subsidiaries.

The Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to 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

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

"Acquired Business" has the meaning specified in the Preliminary Statements.

"Acquired Business' Existing Credit Agreement" means that certain First Lien Credit Agreement, dated as of January 11, 2007 (as may be amended, supplemented or otherwise modified from time to time) by and among RiskMetrics Group Holdings, LLC, the Acquired

Business, Bank of America, N.A., as administrative agent, and the other lenders from time to time party thereto.

“Acquisition” has the meaning specified in the Preliminary Statements.

“Acquisition Agreement” has the meaning specified in the Preliminary Statements.

“Additional Commitments Effective Date” has the meaning specified in Section 2.14(b).

“Additional Lender” has the meaning specified in Section 2.14(b).

“Additional Revolving Credit Commitments” means the commitments of the Additional Revolving Credit Lenders to make Additional Revolving Credit Loans pursuant to Section 2.14.

“Additional Revolving Credit Lenders” means the lenders providing the Additional Revolving Credit Commitments.

“Additional Revolving Credit Loans” means any loans made in respect of any Additional Revolving Credit Commitments that shall have been added pursuant to Section 2.14.

“Additional Term Commitments” means the commitments of the Additional Term Lenders to make Additional Term Loans pursuant to Section 2.14.

“Additional Term Lenders” means the lenders providing the Additional Term Loans.

“Additional Term Loans” means any loans made in respect of any Additional Term Commitments that shall have been added pursuant to Section 2.14.

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

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

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

“Aggregate Commitments” means the Commitments of all the Lenders.

“Aggregate Credit Exposures” means, at any time, in respect of (a) the Term Facility, the aggregate amount of the Term Loans outstanding at such time and (b) in respect of the Revolving Credit Facility, the sum of (i) the unused portion of the Revolving Credit Facility at such time and (ii) the Total Revolving Credit Outstandings at such time.

“Agreement” means this Credit Agreement, as amended from time to time in accordance with the terms hereof.

“Anti-Money Laundering Laws” means any and all laws, judgments, orders, executive orders, decrees, ordinances, rules, regulations, statutes, case law or treaties applicable to a Loan Party, its subsidiaries or Affiliates, related to terrorism financing or money laundering including any applicable provision of Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001 (Title III of Pub. L. 107-56) and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act”, 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

“Applicable Fee Rate” means 0.75% per annum.

“Applicable Percentage” means (a) in respect of the Term Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by (i) on or prior to the Closing Date, such Term Lender’s Term Commitment at such time and (ii) thereafter, the principal amount of such Term Lender’s Term Loans at such time and (b) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Revolving Credit Lender’s Revolving Credit Commitment at such time, subject to adjustment as provided in Section 2.16. If the commitment of each Revolving Credit Lender to make Revolving Credit Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Credit Commitments have expired, then the Applicable Percentage of each Revolving Credit Lender in respect of the Revolving Credit Facility shall be determined based on the Applicable Percentage of such Revolving Credit Lender in respect of the Revolving Credit Facility most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means (a) in respect of the Revolving Credit Facility, (i) from the Closing Date to the date on which the Administrative Agent receives a Compliance Certificate pursuant to Section 6.02(a) for the first fiscal quarter the last day of which occurs at least six months after the Closing Date, 2.25% per annum for Base Rate Loans and 3.25% per annum for Eurodollar Rate Loans and Letter of Credit Fees and (ii) thereafter, the applicable percentage per annum set forth below determined by reference to the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Applicable Rate			
Pricing Level	Consolidated Leverage Ratio	Eurodollar Rate (Letters of Credit)	Base Rate
1	< 2.25:1	2.75%	1.75%
2	≥ 2.25:1 but < 2.75:1	3.00%	2.00%
3	≥ 2.75:1	3.25%	2.25%

and (b) in respect of the Term Facility, (i) from the Closing Date to the date on which the Administrative Agent receives a Compliance Certificate pursuant to Section 6.02(a) for the first fiscal quarter the last day of which occurs at least six months after the Closing Date, 2.25% per annum for Base Rate Loans and 3.25% per annum for Eurodollar Rate Loans and (ii) thereafter, the applicable percentage per annum set forth below determined by reference to the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Applicable Rate			
Pricing Level	Consolidated Leverage Ratio	Eurodollar Rate	Base Rate
1	< 2.75:1	3.00%	2.00%
2	≥ 2.75:1	3.25%	2.25%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the written request of the Required Lenders, Pricing Level 3 shall apply in respect of the Revolving Credit Facility and Pricing Level 2 shall apply in respect of the Term Facility, in each case, as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered until the first Business Day immediately following delivery of such Compliance Certificate, at which time the Applicable Rate shall be determined based on such Compliance Certificate. If at any time an Event of Default shall have occurred and be continuing, then, upon the written request of the Required Lenders, Pricing Level 3 shall apply in respect of the Revolving Credit Facility and Pricing Level 2 shall apply in respect of the Term Facility, in each case as of the first Business Day after the date on which the Borrower shall have received such request until the first Business Day on which such Event of Default is waived or no longer exists.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b).

“Applicable Revolving Credit Percentage” means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender’s Applicable Percentage in respect of the Revolving Credit Facility at such time.

“Appropriate Lender” means, at any time, (a) with respect to any of the Term Facility or the Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a Term Loan or a Revolving Credit Loan, respectively, at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03(a), the Revolving Credit Lenders and (c) with respect to the Swing Line Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

“Approved Fund” means 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.

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

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

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

“Auction Manager” has the meaning specified in Section 2.17(a).

“Auction Notice” shall mean an auction notice given by the Borrower in accordance with the Auction Procedures with respect to a Discounted Prepayment Offer.

“Auction Procedures” shall mean the auction procedures with respect to Discounted Prepayment Offers set forth in Exhibit K hereto.

“Audited Financial Statements” means (i) the audited consolidated statements of financial condition of the Borrower and its Subsidiaries for the fiscal year ended November 30, 2009, and the related consolidated statements of income, comprehensive income, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto and (ii) the audited consolidated balance sheets of the Acquired Business and its Subsidiaries for the fiscal year ended December 31, 2009, and the related consolidated statements

of operations, changes in stockholders' equity and cash flows for such fiscal year of the Acquired Business and its Subsidiaries, including the notes thereto.

“Availability Period” means in respect of the Revolving Credit Facility, the period from and including the Closing Date to the earliest of (i) the Maturity Date for the Revolving Credit Facility, (ii) the date of termination of the Revolving Credit Commitments pursuant to Section 2.06, and (iii) the date of termination of the commitment of each Revolving Credit Lender to make Revolving Credit Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

“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, if any, quoted for such day in The Wall Street Journal as the “U.S. Prime Rate” and (c) the Eurodollar Rate for an Interest Period of one month beginning on such day (or if such day is not a Business Day, the Business Day immediately preceding such day) plus 1.00% per annum. Notwithstanding the foregoing, the Base Rate shall be deemed to be not less than 2.50% per annum.

“Base Rate Loan” means a Revolving Credit Loan or a Term Loan that bears interest based on the Base Rate.

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

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrower's Existing Credit Agreement” means that certain Credit Agreement, dated as of November 20, 2007 (as may be amended, supplemented or otherwise modified from time to time), by and among the Borrower, Bank of America, N.A., as administrative agent, collateral agent, swing line lender and L/C issuer, and the other lenders from time to time party thereto.

“Borrowing” means a Revolving Credit Borrowing, a Swing Line Borrowing or a Term Borrowing, as the context may require.

“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, New York, New York and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations) that are (or are required to be) set forth in a consolidated statement of cash flows of such Person for such period in accordance with GAAP. For purposes of this definition, (a) the purchase price of equipment that is purchased substantially contemporaneously with the trade-in of other equipment shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such equipment for the equipment being traded in at such time and (b) “Capital Expenditures” shall not include expenditures (i)

made to restore, replace, rebuild, develop, maintain, improve or upgrade property, to the extent such expenditure is made with, or subsequently reimbursed out of, insurance proceeds, indemnity payments, condemnation awards (or payments in lieu thereof) or damage recovery proceeds or other settlements relating to any damage, loss, destruction or condemnation of such property, (ii) constituting reinvestment of the Net Cash Proceeds of any Disposition, to the extent permitted under Section 2.05(b)(ii), (iii) made by the Borrower or any of its Subsidiaries as payment of the consideration for Permitted Acquisitions, (iv) made by the Borrower or any of its Subsidiaries to effect leasehold improvements to any property leased by the Borrower or any of its Subsidiaries as lessee, to the extent that such expenses have been reimbursed in cash by the landlord, (v) actually paid for or reimbursed by a third party (excluding the Borrower and any of its Subsidiaries) and for which none of the Borrower and its Subsidiaries has provided or is required to provide or incur, directly or indirectly, any consideration or monetary obligation to such third party or any other person (whether before, during or after such period), or (vi) made with the Equity Net Cash Proceeds from the sale or issuance of Qualified Equity Interests of the Borrower that are Not Otherwise Applied.

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

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, L/C Issuer or Swing Line Lender (as applicable) and the Lenders, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the L/C Issuer or Swing Line Lender benefiting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the L/C Issuer or the Swing Line Lender (as applicable). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens (other than Liens created under the Collateral Documents and other Liens permitted under this Agreement):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus

of at least \$500,000,000, in each case with maturities of not more than 360 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States and rated, at the time of acquisition thereof, at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 360 days from the date of acquisition thereof;

(d) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having, at the time of acquisition thereof, an Investment Grade Rating with maturities of 360 days or less from the date of acquisition;

(e) readily marketable direct obligations issued by any foreign government or any political subdivision or public instrumentality thereof, in each case having, at the time of acquisition thereof, an Investment Grade Rating with maturities of 360 days or less from the date of acquisition;

(f) fully collateralized repurchase agreements with a term of not more than 30 days for underlying securities described in clauses (a) through (e) above and entered into with a financial institution satisfying the criteria described in clause (b) above;

(g) any money market or similar fund not less than 90% of the assets of which are comprised of cash or any of the items specified in clauses (a) through (f) of this definition and as to which withdrawals are permitted at least every 90 days; and

(h) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments of a type analogous to the foregoing.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer, credit card or purchase card services and other cash management arrangements.

"Cash Management Bank" means any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender.

"Casualty Event" shall mean, with respect to any property of the Borrower or any of its Subsidiaries, any loss of or damage to, or any condemnation of, such property for which the Borrower or any of its Subsidiaries receives insurance proceeds or proceeds of a condemnation award.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application

thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

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

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of equity securities of the Borrower representing more than 35% of the combined voting power of all of the issued and outstanding equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower; or

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

“Class” means, with respect to any Loan or Commitment, its character as a Revolving Credit Loan, a Revolving Credit Commitment, a Term Loan or a Term Commitment, as the case may be.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01 and the initial Credit Extension under this Agreement is made.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all of the “Collateral” and “Material Real Property” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Collateral Agent for the benefit of the Secured Parties.

“Collateral Agent” means Morgan Stanley & Co. Incorporated in its capacity as collateral agent under any of the Collateral Documents or any successor or replacement collateral agent.

“Collateral Documents” means, collectively, the Security Agreement, the Intellectual Property Security Agreement, the Mortgages, each of the mortgages, collateral assignments, Security Agreement Supplements, IP Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“Commitment” means a Term Commitment or a Revolving Credit Commitment, as the context may require.

“Committed Loan Notice” means a notice of (a) a Term Borrowing, (b) a Revolving Credit Borrowing, (c) a conversion of Loans from one Type to the other, or (d) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

“Compliance Certificate” means a certificate substantially in the form of Exhibit D or any other form reasonably acceptable to the Borrower and the Administrative Agent.

“Consolidated EBITDA” means, at any date of determination, an amount equal to Consolidated Net Income of the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period plus (a) the following to the extent deducted (and not added back) in calculating such Consolidated Net Income (without duplication): (i) Consolidated Interest Charges, (ii) the provision for Federal, state, local and foreign income taxes and for foreign withholding taxes payable, (iii) depreciation and amortization expense, including any amortization of intangibles, (iv) non-cash charges (including founders’ grants made in connection with the initial public offering of the Borrower’s common stock and non-cash charges related to employee benefit or other management or stock compensation plans or expense, but excluding write-offs, write-downs or reserves with respect to accounts receivable or inventory (which write-offs, write-downs or reserves shall not be added back under any clause of this definition of Consolidated EBITDA (other than clause (b)(ii) below))) (provided that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to such extent, and excluding amortization of a prepaid cash item that was in a prior period), (v) integration costs related to the Transaction (including severance and relocation costs, one-time compensation charges, restructuring charges, integration costs and reserves), (vi) unusual or non-recurring losses or expenses (including severance and relocation costs, one-time compensation charges, restructuring charges, integration costs and reserves), including such items related to Permitted Acquisitions and to closure/consolidation of facilities, in an amount not to exceed, in the aggregate under this clause (vi) for any Measurement Period, 2.5% of Consolidated EBITDA for such Measurement Period, (vii) transaction costs, fees and expenses (including swap breakage costs) in connection with the Transaction, or, to the extent permitted hereunder, any sale of Equity Interests, any Permitted Acquisition or other Investment permitted under Section 7.03, any Disposition permitted under Section 7.05, the

incurrence of, or any refinancing of, any Indebtedness permitted under Section 7.02 (in each case whether or not successful), (viii) any net after-tax loss from the early extinguishment of Indebtedness or hedging obligations or other derivative instruments, (ix) costs of surety bonds incurred in connection with financing activities, (x) mark-to-market losses recognized pursuant to FASB ASC Topic 815 or any successor thereof, (xi) to the extent reimbursement therefor is actually received by the Borrower or a Subsidiary, expenses incurred to the extent covered by indemnification provisions in any agreement in connection with a Permitted Acquisition and (xii) cash expenses incurred during such period in connection with casualty events to the extent such expenses are reimbursed in cash by insurance during such period and minus (b) the following to the extent included in calculating such Consolidated Net Income (without duplication): (i) Federal, state, local and foreign income tax credits, (ii) all non-cash items increasing Consolidated Net Income (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period or reversal of a reserve with respect to accounts receivable or inventory which reduced Consolidated EBITDA hereunder in a prior period), (iii) unusual or non-recurring gains or income, (iv) any net after-tax income from the early extinguishment of Indebtedness or hedging obligations or other derivative instruments, and (v) mark-to-market gains recognized pursuant to FASB ASC Topic 815 or any successor thereof (in each case of or by the Borrower and its Subsidiaries for such Measurement Period); provided that (x) the Consolidated EBITDA calculated on a Pro Forma Basis for the Transaction (before being adjusted on a Pro Forma Basis for other transactions) for the fiscal quarters ended August 31, 2009, November 30, 2009 and February 28, 2010 shall be as set forth on Schedule I hereto, (y) there shall be excluded in determining Consolidated EBITDA non-operating currency transaction gains and losses (including the net loss or gain resulting from Swap Contracts for currency exchange risk) and (z) for purposes of determining the Consolidated Leverage Ratio and Consolidated Interest Coverage Ratio, Consolidated EBITDA shall be determined on a Pro Forma Basis. The calculation of Consolidated EBITDA shall exclude any non-cash impact attributable to the reduction in deferred revenue or reduction in deferred costs to balance sheet accounts as a result of the fair value exercise undertaken as required by purchase method of accounting for the transactions contemplated by the Acquisition or any other acquisition, in accordance with GAAP (such exclusion to be reflected in the period in which such revenues or costs would have been recorded had such reduction not been required).

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, the sum, without duplication, of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct but not contingent obligations arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services (other than accrued expenses, deferred expenses and trade accounts payable in the ordinary course of business and earn-out obligations), (e) all Attributable Indebtedness, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the Borrower or any of its Subsidiaries, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or

any of its Subsidiaries is a general partner or joint venturer (but only to the extent such Person is liable therefor as a result of such Person's ownership interest in such joint venture), unless such Indebtedness is expressly made non-recourse to the Borrower or such Subsidiary. Notwithstanding any other provision of this Agreement to the contrary, the amount of Consolidated Funded Indebtedness for which recourse is limited either to a specified amount or to an identified asset of such Person shall be deemed to be equal to such specified amount or the fair market value of such identified asset as determined by such Person in good faith, as the case may be.

"Consolidated Interest Charges" means, for any Measurement Period, the sum, without duplication, of (a) all interest, premium payments and debt discount in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP but, in any event, excluding upfront fees and expenses and the amortization of deferred financing costs, and (b) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by the Borrower and its Subsidiaries on a consolidated basis for such period. For purposes of the foregoing, interest expense shall be determined after giving effect to any net payments made or received by the Borrower or any Subsidiary with respect to interest rate Swap Contracts.

"Consolidated Interest Coverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Charges paid in cash, in each case, of or by the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period; provided that, for purposes of determining such amount of Consolidated Interest Charges paid in cash for any Measurement Period ending on or prior to the first anniversary of the Closing Date, Consolidated Interest Charges paid in cash means an amount equal to the Consolidated Interest Charges paid in cash 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.

"Consolidated Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA of the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

"Consolidated Net Income" means, at any date of determination, the net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude, without duplication, (a) any net after-tax extraordinary gains or losses for such Measurement Period and the cumulative effect of a change in accounting principles during such Measurement Period, (b) any net after-tax gains or losses on asset sales outside the ordinary course of business, (c) the net income of any Subsidiary (other than a Guarantor) during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that the Borrower's equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash or Cash

Equivalents actually distributed by such Person during such Period to the Borrower or a Guarantor as a dividend or other distribution, and (d) any income (or loss) for such Measurement Period of any Person (other than the Borrower) if such Person is not a Subsidiary, except that the Borrower's equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed by such Person during such Period to the Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary (other than a Guarantor), such Subsidiary is not precluded from further distributing such amount to the Borrower (or a Guarantor) as described in clause (c) of this proviso).

“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” 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.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Cumulative Excess Cash Flow” means the sum of Excess Cash Flow (but not less than zero for any period) for each ECF Period (it being understood that no Excess Cash Flow generated during any period shall be deemed to be Cumulative Excess Cash Flow until the financial statements for such period are delivered pursuant to Section 6.01(a) and the related Compliance Certificate is delivered pursuant to Section 6.02(a)).

“Current Assets” means, with respect to any Person, all assets (other than cash, Cash Equivalents and deferred income taxes) of such Person that, in accordance with GAAP, would be classified as current assets on the balance sheet of such Person, after deducting appropriate and adequate reserves therefrom in each case in which a reserve is proper in accordance with GAAP.

“Current Liabilities” means, with respect to any Person, all items that, in accordance with GAAP, would be classified as current liabilities on the balance sheet of such Person, but excluding, without duplication, (a) the current portion of any long-term Indebtedness, (b) outstanding Revolving Credit Loans, Swing Line Loans and L/C Obligations to the extent otherwise included therein and (c) deferred income taxes.

“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 (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans under the Term Facility plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar 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% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“Defaulting Lender” means, subject to Section 2.16(b), any Lender that, as determined by the Administrative Agent (following consultation with the Borrower), (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit or Swing Line Loans, within three Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower or 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, with respect to Revolving Lenders, 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.

“Discounted Prepayment Offer” shall mean an offer by the Borrower to prepay Term Loans pursuant to the Auction Procedures and otherwise in accordance with Section 2.17.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), 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 which, 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, (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), 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 of clauses (a) through (d) above, prior to the date that is ninety-one (91) days after the Latest Maturity Date;

provided that an Equity Interest shall not be deemed to be a Disqualified Equity Interest solely because it is redeemable or is required to be redeemed 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 all outstanding Letters of Credit.

“Documentation Agent” means Bank of America, N.A.

“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.

“ECF Percentage” has the meaning specified in Section 2.05(b)(i).

“ECF Period” means (i) the period taken as one accounting period from the beginning of the first fiscal quarter of the Borrower commencing after the Closing Date through the end of the fiscal year in which the Closing Date occurs and (ii) each fiscal year of the Borrower thereafter.

“Economic Sanctions Laws” means any and all laws, judgments, orders, executive orders, decrees, ordinances, rules, regulations, statutes, case law or treaties applicable to a Loan Party, its Subsidiaries or Affiliates relating to economic sanctions and terrorism financing, including any applicable provisions of the Trading with the Enemy Act (50 U.S.C. App. §§ 5(b) and 16, as amended), the International Emergency Economic Powers Act, (50 U.S.C. §§ 1701-1706, as amended) and Executive Order 13224 (effective September 24, 2001), as amended.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Embargoed Person” shall mean any party that (i) is publicly identified on the most current list of “Specially Designated Nationals and Blocked Persons” published by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) or (ii) resides, is organized or chartered, or has a place of business in a country or territory that is the subject of OFAC sanctions programs.

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

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of

the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment 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 Net Cash Proceeds” means, with respect to the issuance or sale of any Qualified Equity Interest of the Borrower, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such issuance or sale over (ii) all taxes, underwriting discounts and commissions and other reasonable out-of-pocket fees and expenses incurred by the Borrower in connection with such issuance or sale.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities of such Person convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting; provided that “Equity Interests” shall exclude any indebtedness convertible into or exchangeable for Equity Interests.

“ERISA” means the Employee Retirement Income Security Act of 1974 and the regulations promulgated and the rulings issued thereunder.

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

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity 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) any failure to meet the minimum funding standard under Section 412 of the Code or Section 302 of ERISA, with respect to any Pension Plan, whether or not waived, or the failure to make any required contribution to a Multiemployer Plan; (d) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (e) the filing of a notice of intent to terminate a Pension Plan or Multiemployer Plan or the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Section 4041 or 4041A of ERISA, respectively; (f) the institution by the PBGC of proceedings to terminate a Pension Plan or

Multiemployer Plan; (g) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (h) the determination that any Pension Plan is considered an at-risk plan or a Multiemployer Plan is in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303 and 305 of ERISA; or (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

“Eurodollar Rate” means: (a) for any Interest Period with respect to a Eurodollar Rate Loan, (i) the rate per annum equal to 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 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 Dollar deposits for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted by the Administrative Agent and with a term equivalent to such Interest Period would be offered to major banks in the London or other offshore interbank eurodollar market for such currency at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period or (b) for any interest calculation with respect to a Base Rate Loan on any date, (i) the rate per annum equal to 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 to major banks in the London interbank eurodollar market at their request at the date and time of determination. Notwithstanding the foregoing, the Eurodollar Rate shall not be deemed to be less than 1.50% per annum.

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

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

“Excess Cash Flow” means, for any ECF Period, the excess (if any) of (a) the sum, without duplication, of (i) Consolidated EBITDA for such ECF Period, (ii) if there was a net increase in consolidated Current Liabilities of the Borrower and its Subsidiaries for such ECF Period, the amount of such net increase, (iii) if there was a net decrease in consolidated Current Assets of the Borrower and its Subsidiaries for such ECF Period, the amount of such net decrease, (iv) to the extent excluded from the calculation of Consolidated Net Income for such ECF Period, after-tax extraordinary cash gains and (v) to the extent excluded from the calculation of Consolidated EBITDA for such ECF Period, unusual or non-recurring cash gains or income over

(b) the sum (for such ECF Period), without duplication, of (i) Consolidated Interest Charges actually paid in cash by the Borrower and its Subsidiaries, (ii) scheduled principal repayments, to the extent actually made of Term Loans pursuant to Section 2.07(a), (iii) all income taxes and foreign withholding taxes actually paid in cash by the Borrower and its Subsidiaries, (iv) Capital Expenditures actually made by the Borrower and its Subsidiaries in such ECF Period to a party other than the Borrower or any of its Subsidiaries solely to the extent permitted by this Agreement, except to the extent such Capital Expenditures were financed with proceeds of Indebtedness (other than Revolving Credit Loans) or Equity Interests of the Borrower or any of its Subsidiaries or other proceeds from a financing transaction that would not be included in Consolidated EBITDA, (v) if there was a net increase in consolidated Current Assets of the Borrower and its Subsidiaries for such ECF Period, the amount of such net increase, (vi) if there was a net decrease in consolidated Current Liabilities of the Borrower and its Subsidiaries for such ECF Period, the amount of such net decrease, (vii) cash used to consummate a Permitted Acquisition during such ECF Period to the extent not financed with proceeds of Indebtedness (other than Revolving Credit Loans) or Equity Interests of the Borrower or any of its Subsidiaries, or other proceeds from a financing transaction that would not be included in Consolidated EBITDA, (viii) the aggregate amount of principal payments of Consolidated Funded Indebtedness (other than the Loans) made during such ECF Period, excluding any amount funded with proceeds from the issuance of Indebtedness (other than Revolving Credit Loans) or Equity Interests of the Borrower or any of its Subsidiaries or other proceeds from a financing transaction that would not be included in Consolidated EBITDA, provided that (A) such payments are not prohibited under this Agreement and (B) if such Indebtedness consists of a revolving line of credit, the commitments under such revolving line of credit are permanently reduced by the amount of such payment, (ix) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower or any of its Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness and that are accounted for as extraordinary items, except to the extent such premium, make-whole or penalty payments are financed with the proceeds of Indebtedness (other than Revolving Credit Loans) or Equity Interests of the Borrower or any of its Subsidiaries or other proceeds from a financing transaction that would not be included in Consolidated EBITDA, (x) cash payments made during such ECF Period in respect of non-cash charges that increased Excess Cash Flow in any prior applicable period, (xi) to the extent excluded from the calculation of Consolidated Net Income, after-tax extraordinary cash losses or expenses, (xii) cash integration costs related to the Transaction (including severance and relocation costs, one-time compensation charges, restructuring charges, integration costs and reserves), (xiii) transaction costs, fees and expenses (including swap breakage costs) in connection with the Transaction, or, to the extent permitted hereunder, any sale of Equity Interests, any Permitted Acquisition or other Investment permitted under Section 7.03, any Disposition permitted under Section 7.05, the incurrence of, or any refinancing of, any Indebtedness permitted under Section 7.02 (in each case whether or not successful) and not paid with the proceeds of any financing transaction, including proceeds of the Loans (other than Revolving Credit Loans), (xiv) to the extent included in calculating Consolidated EBITDA, cash expenses of surety bonds incurred in connection with financing activities, (xv) to the extent included in calculating Consolidated EBITDA, unusual or non-recurring losses or expenses, charges and integration costs that are cash expenditures and (xvi) the amount expended for the prepayment of Term Loans pursuant to Discontinued Prepayment Offers under Section 2.17.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder or any other Loan Document, (a) Taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits Taxes imposed by the United States, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any United States federal withholding Tax that is imposed on amounts payable to such Foreign Lender pursuant to any laws in effect at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 3.01(a), (d) any withholding Taxes (including any U.S. federal backup withholding tax) attributable to a Lender’s failure to comply with Section 3.01(e) and (e) any Tax imposed on any “withholdable payment” as result of the failure by any Foreign Lender or any recipient of any payments under any Loan Document that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code to comply with the applicable requirements as set forth in Section 1471 or Section 1472 of the Code (or regulation or administrative guidance promulgated thereunder).

“Facility” means the Term Facility or the Revolving Credit Facility, as the context may require.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means the fee letter agreement, dated February 28, 2010, between the Borrower and MSSF.

“Foreign Lender” means any Lender or L/C Issuer that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

“Foreign Subsidiary” means any direct or indirect Subsidiary of the Borrower which is not a Domestic Subsidiary.

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

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage 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 Applicable Percentage 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 (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

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

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

“Granting Lender” has the meaning specified in Section 10.06(g).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other 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 obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee

shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made (or, if such Guarantee is limited by its terms to a lesser amount, such lesser amount) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith; provided that, in the case of any Guarantee of the type set forth in clause (b) above, if recourse to such Person for such Indebtedness is limited to the assets subject to such Lien, then such Guarantee shall be a Guarantee hereunder solely to the extent of the lesser of (x) the amount of the Indebtedness secured by such Lien and (y) the value of the assets subject to such Lien. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantors" means, collectively, the Subsidiaries of the Borrower listed on Schedule 6.12 and each other Subsidiary of the Borrower that shall be required to execute and deliver a Guaranty or Guaranty supplement pursuant to Section 6.12.

"Guaranty" means, collectively, the Guaranty made by the Guarantors in favor of the Secured Parties, substantially in the form of Exhibit E, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Hedge Bank" means any Person that, at the time it enters into a Secured Hedge Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Secured Hedge Agreement.

"Immaterial Subsidiary" means, at any date of determination, a Subsidiary of the Borrower that, together with all other Immaterial Subsidiaries, (i) did not have total assets on the last day of the most recent Measurement Period that equaled or exceeded 5% of the consolidated total assets of the Borrower and its Subsidiaries at such date, (ii) did not contribute 5% or more of the Consolidated EBITDA of the Borrower and its Subsidiaries for such period and (iii) does not own any Material Intellectual Property or any Material Real Property.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (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 of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(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 trade accounts payable, deferred expenses or accrued expenses in the ordinary course of business and earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP and if not paid after becoming due and payable);

(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), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness of such Person;

(g) all obligations of such Person in respect of Disqualified Equity Interests; and

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

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer (but only to the extent such Person is liable therefor as a result of such Person's ownership interest in such joint venture), unless such Indebtedness is expressly made non-recourse to such Person. 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.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitee” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Intellectual Property Security Agreement” has the meaning specified in Section 4.01(a)(iv).

“Interest Payment Date” means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan or Swing Line Loan, the last Business Day of each fiscal quarter of the Borrower, commencing with the first such day to occur after the Closing Date, and the Maturity Date of the Facility under which such Loan was made (with Swing Line Loans being deemed made under the Revolving Credit Facility for purposes of this definition).

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

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

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

(c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or substantially all of the business of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, but shall be reduced by the amount equal to any returns (including dividends, interest, distributions, returns of principal and profits on sale) received by (or, in the case of any Guarantee, the reduction in exposure to) the Borrower or any of the Subsidiaries in cash in respect of any such Investments made after the Closing Date.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s or BBB- (or the equivalent) by S&P, or an equivalent rating by any other nationally recognized statistical rating agency selected by the Borrower.

“IP Rights” has the meaning specified in Section 5.17.

“IP Security Agreement Supplement” has the meaning specified in Section 12(f) of the Security Agreement.

“IRS” means the United States Internal Revenue Service.

“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.

“Latest Maturity Date” means, at any time of determination, the latest of (i) the Maturity Date for the Term Loans, (ii) the Maturity Date for the Revolving Loans and (iii) the maturity date of any Additional Term Loans pursuant to Section 2.14 at such 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, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“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 Applicable Revolving Credit Percentage.

“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 increase of the amount thereof.

“L/C Issuer” means MSSF in its capacity as issuer of Letters of Credit hereunder, any successor issuer of Letters of Credit hereunder or any other Lender that is approved by the Borrower and the Administrative Agent to issue Letters of Credit. The term “L/C Issuer” shall mean the applicable issuer of the relevant Letters of Credit as the context may require.

“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 1.06. 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.

“Lead Arranger” means MSSF in its capacity as sole lead arranger and sole book-runner.

“Lender” has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

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

“Letter of Credit” means any standby letter of credit issued hereunder.

“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 L/C Issuer.

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

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means an amount equal to \$25,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest 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 financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term Loan, a Revolving Credit Loan or a Swing Line Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Collateral Documents, (e) the Fee Letter, (f) any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.15 of this Agreement and (g) each Issuer Document; provided, that, unless otherwise specified in the applicable Collateral Document or the Guaranty, for the purposes of the Collateral Documents and the Guaranty, “Loan Documents” shall also include Secured Hedge Agreements and Secured Cash Management Agreements.

“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.

“Material Adverse Change” means, with respect to any Person, a material adverse effect on (i) the financial condition, business, assets or results of operations of such Person and its Subsidiaries, taken as a whole, other than, in the case of any of the foregoing, any such effect to the extent resulting from (A) changes in the financial or securities markets or general economic or political conditions in the United States or any other market in which such Person or its Subsidiary operates not having a materially disproportionate effect on such Person and its Subsidiaries,

taken as a whole, relative to other participants in the industry in which such Person and its Subsidiaries operate, (B) changes required by generally accepted accounting principles or changes required by the regulatory accounting requirements applicable to any industry in which such Person and its Subsidiaries operate, (C) changes (including changes of applicable law) or conditions generally affecting the industry in which such Person and its Subsidiaries operate and not specifically relating to or having a materially disproportionate effect on such Person and its Subsidiaries, taken as a whole, (D) any engagement in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any acts of war, sabotage or terrorism or natural disasters involving the United States occurring prior to, on or after February 28, 2010 not having a materially disproportionate effect on such Person and its Subsidiaries, taken as a whole, relative to other participants in the industry in which such Person and its Subsidiaries operate, (E) the entry into or announcement of the transactions contemplated by the Acquisition Agreement or the consummation of the transactions contemplated thereby (including any impact on customers or employees), (F) any failure by such Person and its Subsidiaries to meet any internal or published budgets, projections, forecasts or predictions of financial performance for any period (it being understood that this clause (F) shall not prevent a party from asserting that any fact, change, event, occurrence, circumstance or effect that may have contributed to such failure independently constitutes or contributes to a Material Adverse Change), (G) a change in the trading prices or volume of such Person's common stock (it being understood that this clause (G) shall not prevent a party from asserting that any fact, change, event, occurrence, circumstance or effect that may have contributed to such change independently constitutes or contributes to a Material Adverse Change) or (H) any action taken (or omitted to be taken) as required by the Acquisition Agreement or at the written request of the Borrower with the consent of the Lead Arranger (such consent not to be unreasonably withheld or delayed) or (ii) such Person's ability to consummate the transactions contemplated by the Acquisition Agreement.

“Material Adverse Effect” means (a) a material adverse effect on the operations, business, properties, liabilities (actual or contingent) or financial condition of the Borrower and its Subsidiaries, taken as a whole; (b) a material adverse effect on the ability of the Loan Parties (taken as a whole) to perform their payment obligations under any Loan Document; or (c) a material adverse effect on the rights and remedies of the Lenders and the Administrative Agent under any Loan Document.

“Material Contract” means, with respect to any Person, each contract to which such Person is a party the breach of which could reasonably be expected to have a Material Adverse Effect.

“Material Domestic Subsidiary” means at any time, any Domestic Subsidiary that (a) contributed 5.0% or more of the Consolidated EBITDA of the Borrower attributable to the Borrower and the Domestic Subsidiaries for the most recent Measurement Period, (b) had consolidated assets representing 5.0% or more of the total consolidated assets of the Borrower and the Domestic Subsidiaries on the last day of the most recent Measurement Period or (c) owns any Material Intellectual Property or any Material Real Property; provided, that the Borrower shall be required, from time to time, to designate one or more Domestic Subsidiaries that would not otherwise satisfy the foregoing requirements as Material Domestic Subsidiaries to the extent that (a) the aggregate amount of the Consolidated EBITDA of the Borrower for the most recent Measurement

Period attributable to all Domestic Subsidiaries that are not Material Domestic Subsidiaries would otherwise exceed 10.0% or more of the Consolidated EBITDA of the Borrower attributable to the Borrower and the Domestic Subsidiaries for such period or (b) the total consolidated assets of all Domestic Subsidiaries that are not Material Domestic Subsidiaries would otherwise exceed 10.0% or more of the total consolidated assets of the Borrower and the Domestic Subsidiaries on the last day of the most recent Measurement Period; provided further that any Domestic Subsidiary that has Guaranteed any material indebtedness of any of the Loan Parties shall be a Material Domestic Subsidiary.

“Material Intellectual Property” means any IP Rights that are material to the operation of the business of the Borrower and its Subsidiaries, taken as a whole.

“Material Real Property” means real property owned in fee by any Loan Party with a fair market value in the good faith judgment of such Loan Party in excess of \$2,500,000.

“Maturity Date” means (a) with respect to the Revolving Credit Facility, the fifth year anniversary of the Closing Date and (b) with respect to the Term Facility, the sixth year anniversary of the Closing Date; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Measurement Period” means, at any date of determination, the most recently completed four fiscal quarters of the Borrower ending on or prior to such date (or, in the case of the first ECF Period, the period referred to in clause (i) of the definition thereof).

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

“Morgan Stanley” means Morgan Stanley, a Delaware corporation.

“Mortgage” means any mortgage, deed of trust, trust deeds, deed to secure debt or similar document encumbering any Material Real Property and securing the Obligations of one or more Loan Parties.

“MSSF” means Morgan Stanley Senior Funding, Inc. and its successors.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means:

(a) with respect to any Disposition by the Borrower or any of its Subsidiaries, or any Casualty Event, the excess, if any, of (i) the sum of cash and Cash Equivalents received

in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount, premium or penalty, if any, interest and other amounts payable in respect of any Indebtedness that is secured by the applicable asset and that is, or is required to be, repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable out-of-pocket fees and expenses incurred by the Borrower or such Subsidiary in connection with such transaction, (C) taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction (including, in the case of any Disposition or Casualty Event in respect of property of any Foreign Subsidiary, taxes payable upon the repatriation of such proceeds to the United States) in connection therewith; provided that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds; (D) amounts provided as a reserve against any liabilities under any indemnification obligations or purchase price adjustment associated with such Disposition (provided that, to the extent and at the time any such amounts are released from such reserve other than to pay such liability, such amounts shall constitute Net Cash Proceeds); provided, further, that no such proceeds resulting from any Disposition or any Casualty Event shall be considered Net Cash Proceeds until the aggregate amount of such proceeds not applied pursuant to Section 2.05(b)(ii) exceeds \$2,500,000, at which time the entire amount of such proceeds (including such \$2,500,000) shall constitute Net Cash Proceeds; and

(b) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) all taxes (including in the case of any Indebtedness incurred or issued by any Foreign Subsidiary, taxes payable upon the repatriation of such proceeds to the United States), underwriting discounts and commissions, and other reasonable out-of-pocket fees and expenses, incurred by the Borrower or such Subsidiary in connection therewith.

In the case of any such amounts received by a Subsidiary that is not a wholly owned Subsidiary of the Borrower, the Net Cash Proceeds shall be limited to the portion of such amounts corresponding to the percentage of the Equity Interests of such Subsidiary held directly or indirectly by the Borrower.

“Not Otherwise Applied” means, with reference to any amount of Equity Net Cash Proceeds or Excess Cash Flow, as the case may be, that is proposed to be applied to a particular use or transaction, such amount that (a) is not or was not required to be applied to prepay Loans pursuant to Section 2.05(b), and (b) has not previously been (and is not simultaneously being) applied to anything other than that such particular use or transaction.

“Note” means a Term Note or a Revolving Credit Note, as the context may require.

“OFAC” shall have the meaning set forth in the definition of “Embargoed Person.”

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party 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 any Affiliate thereof 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; provided, that, for the purposes of the Collateral Documents and the Guaranty, “Obligations” shall also include obligations of any Loan Party arising under any Secured Hedge Agreement or Secured Cash Management Agreement. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents include (a) the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, attorneys’ fees and disbursements, 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.

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

“Outstanding Amount” means (a) with respect to Term Loans, Revolving Credit Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Credit Loans and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Participant” has the meaning specified in Section 10.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430 and 436 of the Code and Sections 302 and 303 of ERISA.

“Pension Plan” means any employee pension benefit plan within the meaning of Section 3(2) of ERISA (including Multiple Employer Plans but excluding Multiemployer Plans) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Acquisition” has the meaning specified in Section 7.03(h).

“Permitted Encumbrances” has the meaning specified in the Mortgages.

“Permitted Refinancing” means, with respect to any Person, any refinancing, refunding, renewal 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 refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.02(f), such refinancing, refunding, renewal 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 refinanced, refunded, renewed or extended, (c) if the Indebtedness being refinanced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such refinancing, refunding, renewal 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 refinanced, refunded, renewed or extended, taken as a whole, (d) no Subsidiary that is not an obligor under the Indebtedness being refinanced, refunded renewed or extended shall be an obligor under such refinancing, refunding, renewal or extension, and (e) at the time thereof, no Event of Default shall have occurred and be continuing.

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

“Plan” means any employee pension benefit plan within the meaning of Section 3(2) of ERISA that is maintained or contributed to by the Borrower or its subsidiaries, or, with respect to any Plan that is a Pension Plan, any ERISA Affiliate.

“Platform” has the meaning specified in Section 6.02.

“Pledged Debt” has the meaning specified in Section 1(d)(iv) of the Security Agreement.

“Pledged Equity” has the meaning specified in Section 1(d)(iii) of the Security Agreement.

“Pro Forma Basis” means, for purposes of calculating the Consolidated Leverage Ratio and the Consolidated Interest Coverage Ratio:

(a) the Transaction or any Investments, Permitted Acquisitions, Dispositions of any Subsidiary, line of business or division that have been made by the Borrower or any of its Subsidiaries, and incurrences or repayments of Indebtedness in connection with the Transaction or such Investment, Permitted Acquisition or Disposition, during the applicable reference period or subsequent to such reference period and on or prior to the date of determination will be given pro forma effect, as if they had occurred on the first day of the applicable reference period;

(b) any Person that is a Subsidiary of the Borrower on the date of determination will be deemed to have been a Subsidiary of the Borrower at all times during such reference period; and

(c) any Person that is not a Subsidiary of the Borrower on the date of determination will be deemed not to have been a Subsidiary of the Borrower at any time during such reference period.

For purposes of this definition, whenever pro forma effect is given to a transaction, the pro forma calculations shall be made in good faith by a Responsible Officer of the Borrower and, except as set forth in the next sentence, in a manner consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as set forth in a certificate of a Responsible Officer of the Borrower (with supporting calculations) and reasonably acceptable to the Administrative Agent. In addition to any adjustments consistent with Regulation S-X, such certificate may set forth additional pro forma adjustments arising out of factually supportable and identifiable cost savings initiatives attributable to, or any other adjustments reasonably acceptable to the Administrative Agent attributable to, the Transaction or such Investment, Permitted Acquisition or Disposition (net of any additional costs associated with the Transaction or such Investment, Permitted Acquisition or Disposition) and expected in good faith to be realized within 18 months following the Transaction and within 12 months following such Investment, Permitted Acquisition or Disposition, including, but not limited to, (w) reduction in personnel expenses, (x) reduction of costs related to administrative functions, (y) reductions of costs related to leased or owned properties and (z) reductions from the consolidation of operations and streamlining of corporate overhead (taking into account, for purposes of determining such calculation, any historical financial statements of the business or entities acquired or disposed of, assuming the Transaction or such Investment, Permitted Acquisition or Disposition, and all other Investments, Permitted Acquisitions or Dispositions that have been consummated during the beginning of such period, and any Indebtedness or other liabilities repaid or incurred in connection therewith had been consummated and incurred or repaid at the beginning of such period; provided, that the aggregate amount of adjustments made pursuant to this sentence shall at no time exceed 15% of Consolidated EBITDA after giving pro forma effect thereto. 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. 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 the Borrower may designate.

“Pro Forma EBITDA” has the meaning specified in Section 4.01(g).

“Pro Forma Financial Statements” has the meaning specified in Section 4.01(f)(ii).

“Public Lender” has the meaning specified in Section 6.02.

“Qualified Equity Interests” of any Person means any Equity Interests of such Person that are not Disqualified Equity Interests of such Person.

“Refinanced Term Loans” has the meaning specified in Section 10.01.

“Refinancing” means the payment in full of all amounts due or outstanding in respect of the Borrower’s Existing Credit Agreement and the Acquired Business’ Existing Credit Agreement, the termination of all commitments (if any) thereunder and the release of all guarantees and liens in respect thereof.

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

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

“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, other than events for which the 30 day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Term Loans or 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 Lenders” means, as of any date of determination, Lenders holding more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit 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.

“Required Revolving Lenders” means, as of any date of determination, Revolving Credit Lenders holding more than 50% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit 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 Revolving Credit Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders.

“Required Term Lenders” means, as of any date of determination, Term Lenders holding more than 50% of the Term Facility on such date; provided that the portion of the Term Facility held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Term Lenders.

“Responsible Officer” means the chief executive officer, president, chief financial officer, principal accounting officer, treasurer, assistant treasurer or controller of a Loan Party and, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01(a)(vi), the secretary or any assistant secretary 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 Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Borrower or any of its Subsidiaries, 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 capital stock or other Equity Interest, or on account of any return of capital to the Borrower’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment; provided that any payment on any indebtedness convertible into or exchangeable for any Equity Interests shall not constitute a Restricted Payment.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Eurodollar 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) or 2.14, (b) purchase participations in L/C Obligations, 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 on Schedule 2.01 under the caption “Revolving Credit Commitment” or opposite such caption 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 pursuant to Section 2.14. The aggregate Revolving Credit Commitments of all Revolving Credit Lenders shall be \$100,000,000 on

the Closing Date, as such amount may be adjusted from time to time in accordance with the terms of this Agreement.

“Revolving Credit Facility” means, at any time, the aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments at such time.

“Revolving Credit Lender” means, at any time, any Lender that has a Revolving Credit Commitment at such time.

“Revolving Credit Loan” has the meaning specified in Section 2.01(b).

“Revolving Credit Note” means a promissory note made by the Borrower in favor of a Revolving Credit Lender evidencing Revolving Credit Loans or Swing Line Loans, as the case may be, made by such Revolving Credit Lender, substantially in the form of Exhibit C-2.

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

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

“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between the Borrower or any Loan Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Swap Contract required or permitted under Article VI or VII that is entered into by and between the Borrower and any Hedge Bank.

“Secured Parties” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, the L/C Issuer, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“Security Agreement” has the meaning specified in Section 4.01(a)(iii).

“Security Agreement Supplement” has the meaning specified in Section 22 of the Security 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 property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for

which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“SPC” has the meaning specified in Section 10.06(g).

“Stock Certificates” means Collateral consisting of stock certificates representing Pledged Equity of the Acquired Business and its Subsidiaries or Subsidiaries of the Borrower required as Collateral pursuant to Section 4.01(a)(v) for which a security interest can be perfected by delivering such stock certificates.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“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 Lender” means MSSF 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.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Syndication Agent” means Credit Suisse Securities (USA) LLC in its capacity as syndication agent under this Agreement.

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

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

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

“Term Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(a).

“Term Commitment” means, as to each Term Lender, its obligation to make Term Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Term Commitment” or opposite such caption 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 pursuant to Section 2.14. The aggregate amount of the Term Commitments as of the Closing Date is \$1,275,000,000.

“Term Facility” means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Term Commitments at such time and (b) thereafter, the aggregate principal amount of the Term Loans of all Term Lenders outstanding at such time.

“Term Lender” means (a) at any time on or prior to the Closing Date, any Lender that has a Term Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Term Loans at such time.

“Term Loan” means an advance made by any Term Lender under the Term Facility.

“Term Note” means a promissory note made by the Borrower in favor of a Term Lender, evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit C-1.

“Threshold Amount” means \$30,000,000.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Total Revolving Credit Outstandings” means the aggregate Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and L/C Obligations.

“Transaction” means, collectively, (a) the Acquisition, (b) the Refinancing, (c) the entering into by the Loan Parties and their applicable Subsidiaries of the Loan Documents to which they are a party and (d) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

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

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any 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.

“UCC Filing Collateral” means Collateral located in any state of the United States or the District of Columbia consisting solely of assets of the Acquired Business and its Subsidiaries or Borrower and its Subsidiaries for which a security interest can be perfected by filing a UCC financing statement.

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

“Unmatured Surviving Obligations” means Obligations under this Agreement and the other Loan Documents that by their terms survive the termination of this Agreement or the

other Loan Documents but are not, as of the date of determination, due and payable and for which no outstanding claim has been made.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Unrestricted Cash” means the aggregate amount of cash and Cash Equivalents held in accounts of the Borrower and its Subsidiaries (and included in the consolidated balance sheet of the Borrower) to the extent that (i) the use of such cash or Cash Equivalents for application to payment of the Obligations or other Indebtedness is not prohibited by law or any contract or other agreement and (ii) such cash and Cash Equivalents are free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01, and Liens permitted by Sections 7.01(a) and (m)).

“USA Patriot Act” has the meaning specified in Section 10.17.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) 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 (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) 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.

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

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such

references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

(c) 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.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements of the Borrower and its Subsidiaries, except as otherwise specifically prescribed herein. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB ASC Topic 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any of its Subsidiaries at “fair value,” as defined therein.

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

1.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to 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).

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

1.06 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any 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 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.

1.07 Currency Equivalents Generally. Any amount specified in this Agreement (other than in Articles II and IX) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.07, the “Spot Rate” for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

1.08 Pro Forma Calculation. Notwithstanding anything to the contrary herein, the calculation of the Consolidated Leverage Ratio and the Consolidated Interest Coverage Ratio on any date for any purpose under this Agreement shall be made on a Pro Forma Basis.

ARTICLE II

THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 The Loans.

(a) The Term Borrowing. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a single loan to the Borrower on the Closing Date in a principal amount not to exceed such Term Lender’s Term Commitment. The Term Borrowing shall consist of Term Loans made simultaneously by the Term Lenders in accordance with their respective Term Commitments. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurodollar Rate Loans as further provided herein.

(b) The Revolving Credit Borrowings. Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make loans (each such loan, a “Revolving Credit Loan”) to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Revolving Credit Commitment; provided, however, that after giving effect to any

Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Credit Lender's Revolving Credit Commitment. Within the limits of each Revolving Credit 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 Eurodollar Rate Loans, as further provided herein.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Term Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans (or, in the case of Borrowings to be made on the Closing Date, on the Closing Date), and (ii) on the requested date of any Borrowing of Base Rate Loans; provided, however, that if the Borrower wishes to request Eurodollar Rate Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of "Interest Period," (A) the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Appropriate Lenders of such request and determine whether the requested Interest Period is acceptable to all of them and (B) not later than 11:00 a.m., three Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all such Lenders. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$100,000 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 Term Borrowing, a Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other, or a continuation of Eurodollar 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 or Revolving Credit Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation

(or, in the case of outstanding Eurodollar Rate Term Loans, fails to give a notice requesting a conversion or continuation before 11:00 a.m. three Business Days prior to the last date of any Interest Period then in effect), then (a) except in the case of outstanding Eurodollar Rate Term Loans, the applicable Term Loans or Revolving Credit Loans shall be made as, or converted to, Base Rate Loans, and (b) in the case of outstanding Eurodollar Rate Term Loans, such Eurodollar Rate Term Loans shall be continued as Eurodollar Rate Term Loans with an Interest Period of one month. Any such automatic conversion to Base Rate Loans, or continuation of Eurodollar Rate Term Loans for an additional Interest Period of one month, shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be converted to a Eurodollar Rate Loan.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the applicable Facility of the applicable Term Loans or Revolving Credit 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, if applicable, continuation of Eurodollar Rate Term Loans for an additional Interest Period of one month, described in Section 2.02(a). In the case of a Term Borrowing or a Revolving Credit Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available 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. Upon satisfaction of the applicable conditions set forth in Section 4.02 (or, if such Borrowing is the initial Credit Extension, Section 4.01), 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 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 to the Administrative Agent by the Borrower; provided, however, that if, on the date a Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. Upon notice to the Borrower from the Administrative Agent or the Required Lenders during the existence of an Event of Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans.

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

(e) After giving effect to all Term 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 five (5) Interest Periods in effect in respect of the Term Facility. 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 ten (10) Interest Periods in effect in respect of the Revolving Credit Facility.

(f) Anything in this Section 2.02 to the contrary notwithstanding, the Borrower may not select Interest Periods for Eurodollar Rate Loans that have a duration of more than one month until the earlier to occur of (i) the 30th day following the Closing Date and (ii) the date upon which the Administrative Agent has determined that primary syndication has been completed (and the Administrative Agent undertakes to notify the Borrower promptly upon making such determination).

2.03 Letters of Credit.

(a) The Letter of Credit Commitment. (i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees in reliance upon the agreements of the 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 for the account of the Borrower or its Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower or its Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, (y) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, plus such Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Revolving Credit Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) The L/C Issuer shall not issue any Letter of Credit if:

(A) 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 extension, unless the Required Revolving Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless the Administrative Agent and L/C Issuer approve

and the Borrower shall have provided Cash Collateral for the L/C Obligations relating to such Letter of Credit in the manner set forth in Section 2.15 in an amount equal to 102% of such L/C Obligations or other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made in lieu thereof.

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than \$250,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars;

(E) any 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 such Lender or the Borrower to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(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.< /font>

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the 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.

(vi) The L/C Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term “Administrative Agent” as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit. (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the 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 L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least five Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the 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; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the 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 L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the 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, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit (which notice has not been revoked), that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer’s usual and customary business practices. 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 L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the 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 L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the 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, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is sixty Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Revolving Lenders have elected not to permit such extension or (2) 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, and in each such case directing the L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the 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.

(v) Each Letter of Credit issued hereunder on or after the Closing Date will be in the form currently in use by the L/C Issuer.

(c) Drawings and Reimbursements; Funding of Participations . (i) Upon the payment by the L/C Issuer of any draw made against any Letter of Credit by the beneficiary thereof, the L/C Issuer shall notify the Borrower and the Administrative Agent thereof. Not later than 1:00 p.m. on the later of (i) the date of any payment by the L/C Issuer under a Letter of Credit and (ii)(A) the date upon which the Borrower receives notice from the L/C Issuer of such payment by the L/C Issuer, if such notice is received by the Borrower prior to 10:00 a.m. on a Business Day or (B) the Business Day immediately following the date upon which the Borrower received such notice, if such notice is received on a day that is not a Business Day or after 10:00 a.m. on a Business Day (each such date, an "Honor Date"), the Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall

promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Revolving Credit Lender’s Applicable Revolving Credit Percentage 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 and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the 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.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Administrative Agent’s Office in an amount equal to its Applicable Revolving Credit Percentage 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 Revolving Credit 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 L/C Issuer.

(iii) 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 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 Revolving Credit Lender’s payment to the Administrative Agent for the account of the 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.

(iv) Until a Revolving Credit Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender’s Applicable Revolving Credit Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving Credit Lender’s obligation to make Revolving Credit Loans or L/C Advances to reimburse the 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 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, however, 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 L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the 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), then, without limiting the other provisions of this Agreement, the 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 the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's committed Loan included in the relevant committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the 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) At any time after the 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), if the Administrative Agent receives for the account of the 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 Applicable Revolving Credit Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Revolving Credit Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

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

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

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the 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 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 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; or

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

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall, to the extent permitted by law, be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the 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 Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the 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 Revolving Credit Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee

with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the 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 the L/C Issuer's willful misconduct or gross negligence or the 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 furtherance and not in limitation of the foregoing, the 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 the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued the rules of the ISP shall apply to each Letter of Credit.

(h) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit at a rate per annum equal to the Applicable Rate times the daily amount available to be drawn under 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 Section 2.15 shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.16(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each fiscal quarter of the Borrower, 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 and (ii) computed on a quarterly basis in arrears. If there is any change in such Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by such Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate per annum equal to 0.25%, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each fiscal quarter of the Borrower, 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. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the 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 on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) 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.

2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein and in reliance upon the agreements of the other Lenders set forth in this Section 2.04, the Swing Line Lender may, in its sole discretion, make loans (each such loan, a "Swing Line Loan") to the Borrower from time to time on any Business Day during the Availability Period 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 Applicable Revolving Credit Percentage 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 Lender's Revolving Credit Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility at such time, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender at such time, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations at such time, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line Loans at such time shall not exceed such Lender's Revolving Credit Commitment, and 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 bear interest

only at a rate based on the Base Rate. 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 Revolving Credit Lender's Applicable Revolving Credit Percentage 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 \$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 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 telephonic Swing Line Loan Notice, 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, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the 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 Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 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 at its office either by (i) crediting the account of the Borrower on the books of the Swing Line Lender or (ii) wire transfer of such funds in immediately available funds, in each case in accordance with instructions provided to the Swing Line Lender by the Borrower. Notwithstanding the foregoing, if the Swing Line Lender shall elect, pursuant to Section 2.04(a), not to fund any Swing Line Loan for any reason, the Swing Line Lender shall promptly notify the Borrower and the Administrative Agent of such election after the receipt of the relevant Swing Line Loan Notice.

(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 the 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 Applicable Revolving Credit Percentage of the amount of Swing Line Loans 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 Revolving Credit Facility and the conditions set forth in Section 4.02. The 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 Applicable Revolving Credit Percentage

of the amount specified in such Committed Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) 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 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 Swing Line Lender as set forth herein shall be deemed to be a request by the 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 such 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 greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's committed Loan included in the relevant committed Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) 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, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) 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 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 Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Credit Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the 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 10.05 (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 Applicable Revolving Credit Percentage 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 Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(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 a Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Revolving Credit Percentage of any Swing Line Loan, interest in respect of such Applicable Revolving Credit Percentage 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.

2.05 Prepayments.

(a) Optional. (i) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans and Revolving Credit Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 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 Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). 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; provided that any such notice of a prepayment to be made in connection with any refinancing of all of the Facilities with the proceeds of such refinancing

or of any incurrence of Indebtedness, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence (provided further that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 3.05). Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a) shall be applied at the direction of the Borrower or, if not so directed, to the prepayment of the outstanding principal installments of the Term Loans in direct order of maturity. Each prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages (except as permitted under Section 2.16) in respect of each of the Revolving Loans, Swing Line Loans or Term Loans, as applicable; provided that such prepayment shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 3.05.

(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 (A) 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 (B) any such prepayment shall be in a minimum principal amount of \$100,000. 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.

(b) **Mandatory.** (i) Within five Business Days after financial statements have been delivered pursuant to Section 6.01(a) (commencing with the delivery of the financial statements for the fiscal year in which the Closing Date occurs) and the related Compliance Certificate has been delivered pursuant to Section 6.02(a), the Borrower shall prepay an aggregate principal amount of the Facilities equal to the excess (if any) of (A) 50% (such percentage as it may be reduced as described below, the "ECF Percentage") of Excess Cash Flow for the ECF Period then ended over (B) the sum of (1) the aggregate principal amount of Term Loans voluntarily prepaid pursuant to Section 2.05(a)(i) during such ECF Period and (2) solely to the extent the amount of the Revolving Credit Commitments are reduced pursuant to Section 2.06 in connection therewith (and solely to the extent of the amount of such reduction), the aggregate principal amount of Revolving Credit Loans voluntarily prepaid pursuant to Section 2.05(a)(i) during such ECF Period (such prepayments to be applied as set forth in clause (iv) below); provided that (A) the ECF Percentage shall be 25% if the Consolidated Leverage Ratio as at the end of the ECF Period covered by such financial statements is less than or equal to 2.75:1.00 and greater than 2.00:1.00 and (B) the ECF Percentage shall be 0% if the Consolidated Leverage Ratio as at the end of the ECF Period covered by such financial statements is less than or equal to 2.00:1.00.

(ii) If (A) the Borrower or any of its Subsidiaries Disposes of any property (other than any Disposition of any property permitted by Section 7.05 (other than clause (h) thereof)) or (B) any Casualty Event occurs, which results in the realization by such Person of Net Cash Proceeds, the Borrower shall, within five Business Days of receipt of such Net Cash Proceeds, prepay an aggregate principal amount of the Facilities equal to 100% of such Net Cash

Proceeds (such prepayments to be applied as set forth in clause (iv) below); provided, however, that, with respect to any Net Cash Proceeds realized under a Disposition or a Casualty Event described in this Section 2.05(b)(ii), at the election of the Borrower (as notified by the Borrower to the Administrative Agent on or prior to the fifth Business Day after the date of receipt of such Net Cash Proceeds), and so long as no Event of Default shall have occurred and be continuing, the Borrower or such Subsidiary may reinvest all or any portion of such Net Cash Proceeds in any Permitted Acquisitions or in capital assets useful for its business within (x) 12 months after the receipt of such Net Cash Proceeds or (y) if the Borrower or the relevant Subsidiary enters into a legally binding commitment to reinvest such Net Cash Proceeds within 12 months of the receipt thereof, within six months of the date of such legally binding commitment; and provided further, however, that any Net Cash Proceeds not so reinvested (or no longer intended to be so reinvested) shall be immediately applied to the prepayment of the Loans as set forth in this Section 2.05(b)(ii).

(iii) Upon the incurrence or issuance by the Borrower or any of its Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.02 (other than clause (s) thereof)), the Borrower shall prepay an aggregate principal amount of the Facilities equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by the Borrower or such Subsidiary (such prepayments to be applied as set forth in clause (iv) below).

(iv) Each prepayment of Loans pursuant to the foregoing provisions of this Section 2.05(b) shall be applied first to repay the Term Facility, and to the scheduled principal repayment installments in direct order of maturity to the next four principal repayment installments thereof and thereafter to the remaining scheduled principal repayment installments on a pro rata basis and, second, to the Revolving Credit Facility in the manner set forth in clause (vi) of this Section 2.05(b) (without reduction of commitments). Each such prepayment shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 3.05.

(v) If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Facility at such time, the Borrower shall immediately prepay Revolving Credit Loans, Swing Line Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than the L/C Borrowings) in an aggregate amount equal to such excess (without reduction of commitments).

(vi) Prepayments of the Revolving Credit Facility made pursuant to this Section 2.05(b), first, shall be applied ratably to the L/C Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Revolving Credit Loans, and, third, shall be used to Cash Collateralize the remaining L/C Obligations. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the L/C Issuer or the Revolving Credit Lenders, as applicable.

2.06 Termination or Reduction of Commitments.

(a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. three Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Borrower shall not terminate or reduce (A) the Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Letter of Credit Sublimit and (iv) any such notice of termination to be made in connection with any refinancing of all of the Facilities with the proceeds of such refinancing or of any incurrence of Indebtedness, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence (provided that the failure to terminate or reduce as a result of the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 3.05).

(b) Mandatory. (i) The aggregate Term Commitments shall be automatically and permanently reduced to zero immediately after the Term Borrowing.

(ii) The Revolving Credit Commitments shall terminate on the Maturity Date for the Revolving Credit Facility. If after giving effect to any reduction or termination of Revolving Credit Commitments under this Section 2.06, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the Revolving Credit Facility at such time, the Letter of Credit Sublimit or the Swing Line Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(iii) All of the Commitments shall terminate at 5:00 p.m. (New York City time) on September 1, 2010 if the Closing Date has not occurred prior to such time.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit or the Revolving Credit Commitment under this Section 2.06. Upon any reduction of the Revolving Credit Commitments, the Revolving Credit Commitment of each Revolving Credit Lender shall be reduced by such Lender's Applicable Revolving Credit Percentage of such reduction amount. All fees in respect of the Revolving Credit Facility accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

2.07 Repayment of Loans.

(a) Term Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Term Lenders (i) on the last Business Day of each fiscal quarter of the Borrower, commencing with the last Business Day of August 2010, an aggregate principal amount equal to 0.25% of the aggregate principal amount of all Term Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with Sections 2.05 and 2.17) and (ii) on the Maturity Date for the Term Facility, the aggregate principal amount of all Term Loans outstanding on such date.

(b) Revolving Credit Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Revolving Credit Lenders on the Maturity Date for the Revolving Credit Facility the aggregate principal amount of all Revolving Credit Loans outstanding on such date.

(c) Swing Line Loans. The Borrower shall repay each Swing Line Loan on the earlier to occur of (i) the date ten Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Credit Facility.

2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurodollar Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate for such Facility; (ii) each Base Rate Loan under a Facility 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 such Facility; 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 the Revolving Credit Facility minus the Applicable Fee Rate.

(b) (i) If any amount payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter, for so long as such overdue amount shall remain unpaid, bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Accrued and unpaid interest on past due 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.

2.09 Fees. In addition to certain fees described in Sections 2.03(h) and (i):

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, a commitment fee equal to the Applicable Fee Rate times the actual daily amount by which the Revolving Credit Facility exceeds the sum of (i) the Outstanding Amount of Revolving Credit Loans (excluding Swing Line Loans) and (ii) the Outstanding Amount of L/C Obligations; provided, however, 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 shall accrue at all times during the Availability Period, 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 fiscal quarter of the Borrower, commencing on the first such day to occur after the Closing Date, and on the last day of the Availability Period for the Revolving Credit Facility. The commitment fee shall be calculated quarterly in arrears.

(b) Other Fees. (i) The Borrower shall pay to the Lead Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders 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.

2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.

(a) All computations of interest for Base Rate Loans (including the Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). 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 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.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States,

automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under Sections 2.03(c)(iii), 2.03(h) or 2.08(b) or under Article VIII. The Borrower's obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by one or more entries in the Register maintained by the Administrative Agent acting as non-fiduciary agent solely for the purpose of Treasury Regulation 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 conclusive 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, 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 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.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. 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 Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be

deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. 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.

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

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not 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 promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.< /div>

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Credit Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

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

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

2.13 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on

account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

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

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in Section 2.03 or 2.15, (C) any Discounted Voluntary Prepayments made pursuant to Section 2.17; or (D) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or Participant.

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

2.14 Increase in Commitments.

(a) So long as no Default or Event of Default has occurred and is continuing or would result therefrom, upon notice to the Administrative Agent, at any time after the Closing Date, the Borrower may request one or more Additional Term Commitments or one or more Additional Revolving Credit Commitments (it being understood and agreed that (i) at the election of the Borrower, such additional commitments in respect of any term loans may be implemented through the addition of additional new tranches of such loans instead of being implemented as increases in the applicable Commitments and (ii) if the Borrower makes such election, the provisions of this Section shall be read in a manner that permits such election to be implemented); provided that (i) after giving effect to any such addition, the aggregate amount of Additional Term Commitments and Additional Revolving Credit Commitments that have been added pursuant to this Section 2.14 shall not exceed \$300,000,000, (ii) any such addition shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$500,000 in excess thereof (provided that such amount may be less than \$10,000,000 if such amount represents all remaining availability under the aggregate limit in respect of Additional Term Commitments and Additional Revolving Credit Commitments set forth in clause (i) to this proviso), (iii) the final maturity date of

any Additional Term Loans shall be no earlier than the Latest Maturity Date, (iv) the Additional Term Loans shall have a Weighted Average Life to Maturity equal to or greater than the Term Loans outstanding prior to such proposed incurrence of Additional Term Loans (the “Outstanding Term Loans”), (v) the Applicable Rate with respect to any Additional Term Loans shall be determined by the Borrower and the lenders of the Additional Term Loans; provided that in the event that the Applicable Rate for any Additional Term Loans is greater than the Applicable Rate for the Outstanding Term Loans by more than 50 basis points, then the Applicable Rate for the Outstanding Term Loans shall be increased to the extent necessary so that the Applicable Rate for the Additional Term Loans is not more than 50 basis points higher than the Applicable Rate for the Outstanding Term Loans, and the Applicable Rate for the Revolving Credit Facility (including at each point in the grid) shall be increased by a like amount; provided, further, that, in determining the Applicable Rate with respect to Additional Term Loans or Outstanding Term Loans pursuant to this clause (v), (x) original issue discount (“OID”) or upfront or similar fees (which shall be deemed to constitute like amounts of OID) payable by the Borrower to the lenders providing such Additional Term Loans or such Outstanding Term Loans in the primary syndication thereof (with OID being equated to interest based on an assumed four-year life to maturity) shall be included, (y) customary arrangement or commitment fees payable to any lead arranger (or its affiliates) in connection with the Outstanding Term Loans or the Additional Term Loans shall be excluded, and (z) if the lowest permissible Eurodollar Rate is greater than 1.5% or the lowest permissible Base Rate is greater than 2.5% for such Additional Term Loans, the difference between such “floor” and 1.5%, in the case of Eurodollar Loans, or 2.5%, in the case of Base Rate Loans, shall be equated to an increase in the Applicable Rate for purposes of this clause (v), (vi) no Lender shall be required to participate in the Additional Term Commitments or the Additional Revolving Credit Commitments, (vii) subject to clause (iv), the amortization schedule applicable to the Additional Term Commitments shall be determined by the Borrower and the lenders thereof and (viii) the Additional Term Loans shall rank pari passu or junior in right of payment and of security with the Revolving Credit Loans and the Term Loans, in each case in this clause (viii) on terms reasonably satisfactory to the Administrative Agent.

(b) If any Additional Term Commitments or Additional Revolving Credit Commitments are added in accordance with this Section 2.14, the Administrative Agent and the Borrower shall determine the effective date (the “Additional Commitments Effective Date”) of such addition. Additional Term Loans may be made, and Additional Revolving Credit Commitments may be provided, by any existing Lender (and each existing Term Lender will have the right, but not an obligation, to make a portion of any Additional Term Loans and each existing Revolving Credit Lender will have the right, but not an obligation, to provide a portion of any Revolving Credit Commitments, in each case on terms permitted in this Section 2.14 and otherwise on terms reasonably acceptable to the Administrative Agent) or by any other bank or other financial institution (any such other bank or other financial institution being called an “Additional Lender”), provided that the Administrative Agent shall have consented (such consent not to be unreasonably withheld) to such Lender’s or Additional Lender’s providing such Additional Revolving Credit Commitments if such consent would be required under Section 10.06(b) for an assignment of Revolving Credit Commitments to such Lender or Additional Lender. As a condition precedent to such addition, the Borrower shall deliver to the Administrative Agent a certificate dated as of the Additional Commitments Effective Date signed by a Responsible Officer of the Borrower certifying that, before and after giving effect to such increase, (i) the representations

and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Additional Commitments Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall have been true and correct in all material respects as of such earlier date, and except that for purposes of this Section 2.14(b), the representations and warranties contained in Section 5.05(a) and Section 5.05(b) shall be deemed to refer to the most recent financial statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01, (ii) no Default or Event of Default exists immediately before or immediately after giving effect to such addition, and (iii) the Borrower shall be in compliance, on a Pro Forma Basis, with the financial covenants set forth in Section 7.11 after giving effect to the making of Additional Term Loans or Additional Revolving Credit Loans, as applicable. On each Additional Commitments Effective Date, each applicable Lender or other Person which is providing an Additional Term Commitment or an Additional Revolving Credit Commitment (i) in the case of any Additional Revolving Credit Commitment, shall become a "Revolving Credit Lender" for all purposes of this Agreement and the other Loan Documents and (ii) in the case of any Additional Term Commitment, shall make an Additional Term Loan to the Borrower in a principal amount equal to such Lender's or Person's Additional Term Commitment. Any Additional Revolving Credit Loan shall be a "Revolving Credit Loan" for all purposes of this Agreement and the other Loan Documents. Any Additional Term Loan shall be a "Term Loan" for all purposes of this Agreement and the other Loan Documents. The Borrower shall prepay any Revolving Credit Loans outstanding on the Additional Commitments Effective Date with respect to any Additional Revolving Credit Commitment (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving Credit Loans ratable with any revised Applicable Revolving Credit Percentages arising from any nonratable increase in the Revolving Credit Commitments. If there is a new borrowing of Revolving Credit Commitments on such Additional Commitments Effective Date, the Revolving Credit Lenders after giving effect to such Additional Revolving Credit Commitments shall make such Revolving Credit Loans in accordance with Section 2.01(b).

(c) Any other terms of and documentation entered into in respect of any Additional Term Loans made or any Additional Revolving Credit Commitments provided, in each case pursuant to this Section 2.14, shall be consistent with the Term Loans or the Revolving Credit Commitments, as the case may be, (including with respect to voluntary and mandatory prepayments), other than as contemplated by Section 2.14(a)(iii), (iv), (v), (vi) or (vii) above; provided that such other terms and documentation in respect of any Additional Term Loans may be materially different from those of the Term Loans, as the case may be, to the extent such difference shall be reasonably satisfactory to the Administrative Agent. Any Additional Term Loans or Additional Revolving Credit Commitments, as applicable, made or provided pursuant to this Section 2.14 shall be evidenced by one or more entries in the accounts or records maintained by the Administrative Agent in accordance with the provisions set forth in Section 2.11.

(d) This Section 2.14 shall supersede any provisions in Section 2.13 or Section 10.01 to the contrary. Notwithstanding any other provision of any Loan Document, the Loan Documents may be amended by the Administrative Agent and the Loan Parties to provide for terms applicable to each Additional Term Commitment and/or Additional Revolving Credit Commitment, as the case may be.

2.15 Cash Collateral.

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the L/C Issuer (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, promptly Cash Collateralize the then Outstanding Amount of all L/C Obligations. At any time that there shall exist a Defaulting Lender, upon the request of the Administrative Agent, the L/C Issuer or the Swing Line Lender, the Borrower shall promptly deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.16(a)(iv)) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at the Administrative Agent. The Borrower, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders (including the Swing Line Lender), and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). 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.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.04, 2.05, 2.06, 2.16 or 8.02 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly (i) following the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.13)) or (ii) to the extent the aggregate amount of Cash Collateral exceeds the Fronting Exposure; provided, how ever, (x) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.03), and (y) the Person providing Cash Collateral and the

L/C Issuer or Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.16 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 or any other Loan Document 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, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.08), 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 exists), 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 exists, 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 2.16(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 be limited in its right to receive commitment fees as provided in Section 2.09(a) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(h).

(iv) Reallocation of Applicable Percentages 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 "Applicable Percentage" of each non-Defaulting Lender 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 exists; 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 Revolving Credit Commitment of that non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Revolving Credit Loans of that Lender.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the 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), such 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 Applicable Percentages (without giving effect to Section 2.16(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.

2.17 Discounted Voluntary Prepayments.

(a) Notwithstanding anything to the contrary contained in Section 2.05 or any other provision of this Agreement, subject to the terms and conditions set forth or referred to below, the Borrower may from time to time, at its discretion, prepay Term Loans (each, a "Discounted Prepayment Offer"), each such Discounted Prepayment Offer to be managed exclusively by the Lead Arranger or another investment bank of recognized standing selected by the Borrower (in such capacity, the "Auction Manager"), so long as the following conditions are satisfied:

(i) each Discounted Prepayment Offer shall be conducted in accordance with the procedures, terms and conditions set forth in this Section 2.17 and the Auction Procedures;

(ii) no Default or Event of Default shall have occurred and be continuing on the date of the delivery of any Auction Notice and at the time of prepayment of any Term Loans in connection with any Discounted Prepayment Offer;

(iii) the maximum principal amount (calculated on the face amount thereof) of all Term Loans that the Borrower shall offer to prepay in any such Discounted Prepayment Offer shall be no less than \$10,000,000 (unless another amount is agreed to by the Administrative Agent);

(iv) all Term Loans so prepaid by the Borrower shall automatically be cancelled and retired by the Borrower on the applicable settlement date (and, for the avoidance of doubt, may not be reborrowed);

(v) no more than one Discounted Prepayment Offer may be ongoing at any one time and no more than four Discounted Prepayment Offers may be made in any one fiscal year;

(vi) the Borrower represents and warrants that, at the commencement and settlement of the Discounted Prepayment Offer, no Loan Party shall have any material non-public information relating to the Borrower that (A) has not been previously disclosed in writing to the Administrative Agent and the Lenders (other than because such Lender does not wish to receive such material non-public information relating to the Borrower) prior to such time and (B) could reasonably be expected to have a material effect upon, or otherwise be material to, a Lender's decision to participate in the Discounted Prepayment Offer; and

(vii) after giving effect to any prepayment of Term Loans pursuant to this Section 2.17, the sum of (x) the amount of availability under the Revolving Credit Commitments and (y) the aggregate amount of all Unrestricted Cash and Cash Equivalents of the Borrower and its Subsidiaries shall not be less than \$50,000,000;

(viii) the Borrower shall be in compliance with Section 7.11 on a Pro Forma Basis after giving effect to the Discounted Prepayment Offer; and

(ix) at the time of the consummation of each purchase of Term Loans through a Discounted Prepayment Offer, the Borrower shall have delivered to the Auction Manager and the Administrative Agent an officer's certificate of a Responsible Officer certifying as to compliance with preceding clauses (vi), (vii) and (viii).

(b) The Borrower must terminate any Discounted Prepayment Offer if it fails to satisfy one or more of the conditions set forth above which are required to be met at the time at which the Term Loans would have been prepaid pursuant to such Discounted Prepayment Offer. If the Borrower commences any Discounted Prepayment Offer (and all relevant requirements

set forth above which are required to be satisfied at the time of the commencement of such Discounted Prepayment Offer have in fact been satisfied), and if at such time of commencement the Borrower reasonably believes that all required conditions set forth above which are required to be satisfied at the time of the consummation of such Discounted Prepayment Offer shall be satisfied, then the Borrower shall have no liability to any Term Lender or any other Person for any termination of such Discounted Prepayment Offer as a result of its failure to satisfy one or more of the conditions set forth above which are required to be met at the time which otherwise would have been the time of consummation of such Discounted Prepayment Offer, and any such failure shall not result in any Def ault or Event of Default hereunder. With respect to all prepayments of Term Loans made by the Borrower pursuant to this Section 2.17, the Borrower shall pay on the settlement date of each such prepayment all accrued and unpaid interest (except to the extent otherwise set forth in the relevant Auction Procedures), if any, on the prepaid Term Loans up to the settlement date of such prepayment.

(c) All loan prepayments conducted pursuant to Discounted Prepayment Offers shall not constitute voluntary or mandatory prepayments for purposes of Section 2.05 hereof, but Term Loans prepaid pursuant to this Section 2.17 shall reduce scheduled principal repayments installments in direct order of maturity to the next four principal repayment installments and thereafter to the remaining scheduled principal repayments installments on a pro rata basis.

(d) The Auction Manager acting in its capacity as such hereunder shall be entitled to the benefits of the provisions of Article IX and Section 10.04 to the same extent as if each reference therein to the "Administrative Agent" were a reference to the Auction Manager, and the Administrative Agent shall cooperate with the Auction Manager as reasonably requested by the Auction Manager in order to enable it to perform its responsibilities and duties in connection with each Discounted Prepayment Offer.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

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

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

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent, each Lender and the L/C Issuer, within 10 Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) paid by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and, without duplication, any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. After the Administrative Agent, any Lender or the L/C Issuer (as the case may be) learns of the imposition of any Indemnified Taxes or Other Taxes, the Administrative Agent, any Lender or the L/C Issuer (as the case may be) will act in good faith to promptly notify the Borrower of its obligations hereunder; provided, however, that the failure to provide Borrower with such notice shall not release the Borrower of its indemnification obligation under this Section 3.01(c).

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

(e) Status of Lenders. Any Lender entitled to an exemption from or reduction of withholding tax with respect to payments under this Agreement shall deliver to the Borrower (and the Administrative Agent) at any time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law or otherwise reasonably requested by the Borrower or the Administrative Agent to permit such payments to be made without such withholding Tax or at a reduced rate.

Without limiting the foregoing, each Foreign Lender shall, to the extent it is legally eligible to do so, (i) on or prior to the date it becomes a Foreign Lender, (ii) on or prior to the date on which any applicable form or certification expires or becomes obsolete or incorrect, (iii) after the occurrence of any event involving such Foreign Lender that requires a change in the most recent form or certification previously delivered by it to Borrower and the Administrative Agent, and (iv) from time to time if reasonably requested by the Borrower or the Administrative Agent, provide the Administrative Agent and the Borrower whichever of the following is applicable:

(i) duly completed copies of IRS Form W-8BEN (or any successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a

party and which provides for an exemption from or reduction in United States Federal withholding tax,

(ii) duly completed copies of IRS Form W-8ECI (or any successor form),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate substantially in the form of Exhibit I (any such certificate a “United States Tax Compliance Certificate”) to the effect that such Foreign Lender is not (1) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, (3) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (4) or was not engaged in a conduct of a trade or business within the United States to which the interest payment is effectively connected and (B) duly completed copies of IRS Form W-8BEN,

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or participating Lender granting a typical participation), a complete and executed IRS Form W-8IMY, accompanied by a Form W-8ECI, W-8BEN, a United States Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that, if the Foreign Lender is a partnership (and not a participating Lender) and one or more partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender shall provide a United States Tax Compliance Certificate, on behalf of such beneficial owner(s) in lieu of requiring each beneficial owner to provide its own certificate, or

(v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

Without limiting the foregoing, each Lender and L/C Issuer that is a “United States person” within the meaning of Section 7701(a)(30) of the Code that lends to the Borrower (each, a “U.S. Lender”) shall deliver to the Administrative Agent and the Borrower two duly signed, properly completed copies of IRS Form W-9 on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement), certifying that such U.S. Lender is entitled to an exemption from United States backup withholding, or any successor form.

(f) Treatment of Certain Refunds. If the Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion, which shall be applied in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section, it shall pay to a Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses of the Administrative Agent, such Lender or the L/C Issuer, as the case

may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that a Loan Party, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to a Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer if the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or the L/ C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to a Loan Party or any other Person.

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 Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on such Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case 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, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans, and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.0 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan the interest rate on which is determined by reference to the

Eurodollar Rate component of the Base Rate, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case 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 Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs; Reserves on Eurodollar Rate Loans.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement taken into account in determining the Eurodollar Rate or contemplated by Section 3.04(e)) or the L/C Issuer; or

(ii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein (other than with respect to any Indemnified Taxes and Other Taxes covered by Section 3.01);

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

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding

company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section 3.04 or in Section 3.05 and specifying in reasonable detail the basis for such compensation and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, 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 (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan 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), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

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

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any loss of anticipated profits (excluding the Applicable Rate) and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

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

3.06 Mitigation Obligations; Replacement of Lenders.

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

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04 or delivers a notice described in Section 3.02, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrower's obligations under this Article III, as well as the Lenders' obligations under Section 3.01(e), shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension. The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction or waiver of the following conditions precedent:

(a) Loan Documents and Corporate Documents. The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party (if applicable), each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Lead Arranger:

(i) executed counterparts by each Loan Party party thereto of this Agreement and the Guaranty in such number as the Administrative Agent may request;

(ii) a Note executed by the Borrower in favor of each Lender that has requested a Note at least two Business Days in advance of the Closing Date;

(iii) a security agreement, in substantially the form of Exhibit G (together with each other security agreement and security agreement supplement delivered pursuant to Section 6.12, in each case as amended, the "Security Agreement"), duly executed by each Loan Party;

(iv) an intellectual property security agreement, in substantially the form of Exhibit A to the Security Agreement (together with each other intellectual property security agreement and intellectual property security agreement supplement delivered pursuant to Section 6.12, in each case as amended, the "Intellectual Property Security Agreement"), duly executed by each Loan Party party thereto;

(v) the following personal property collateral requirements:

(A) certificates representing the Pledged Equity referred to in the Security Agreement that constitutes certificated securities (as defined in the UCC) accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank to the extent required by the Security Agreement;

(B) proper financing statements in form appropriate for filing, duly prepared for filing under the UCC of all jurisdictions that the Collateral Agent may deem necessary in order to perfect the Liens created under the Security Agreement, covering the UCC Filing Collateral described in the Security Agreement;

(C) proper filings in form appropriate for filing with the United States Patent and Trademark Office and United States Copyright Office together with evidence that all action that the Collateral Agent may deem necessary in order to perfect the Liens created under the Intellectual Property Security Agreement has been taken or will be taken promptly after the Closing Date;

(D) evidence of the completion of, or of arrangements reasonably satisfactory to the Collateral Agent for the completion of, all other actions, recordings and filings of or with respect to the Security Agreement that the Collateral Agent may deem necessary in order to perfect the Liens created thereby;

(E) evidence that all other action that the Collateral Agent may deem necessary in order to perfect the Liens created under the Security Agreement has been taken or that arrangements reasonably satisfactory to the Collateral Agent for the completion thereof have been made;

(F) certified copies of UCC, tax and judgment lien searches, or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents that name any Loan Party as debtor and that are filed in those state and county jurisdictions in which any Loan Party is organized or maintains its principal place of business and such other searches that the Collateral Agent deems necessary; and United States Patent and Trademark Office and United States Copyright Office searches in form and scope reasonably satisfactory to the Collateral Agent; and

(G) evidence reasonably acceptable to the Collateral Agent of payment or arrangements for payment by the Loan Parties of all applicable recording taxes, fees, charges, costs and expenses required for the recording of the Collateral Documents;

provided that to the extent that the requirements of this Section 4.01(a)(v) (other than pledge and perfection of the security interests in Stock Certificates held by a Loan Party and perfection of security interests in UCC Filing Collateral) are not completed on or prior to the Closing Date after the Borrower's use of commercially reasonable efforts to do so or without undue burden or expense, the completion of such requirements of this Section 4.01(a)(v) shall not constitute a condition precedent to the availability of the Facilities on the Closing Date but shall be required to be completed within 60 days after the Closing Date (it being understood that failure to so complete such requirements by such date shall, unless otherwise consented to in writing by the Administrative Agent in its discretion, constitute an Event of Default); provided further that with respect to perfection of security interests in UCC Filing Collateral, the Borrower's sole obligation as a condition to the availability of the Facilities on the Closing Date shall be to deliver, or cause to be delivered, necessary UCC financing statements to the Administrative

Agent and to irrevocably authorize and to cause the applicable guarantors to irrevocably authorize the Administrative Agent to file necessary UCC financing statements, and with respect to the pledge and perfection of security interests in Stock Certificates, the Borrower's sole obligation as a condition to the availability of the Facilities on the Closing Date shall be to use commercially reasonable efforts to deliver to the Administrative Agent Stock Certificates together with undated stock powers in blank;

(vi) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably 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;

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

(viii) a favorable opinion of Davis Polk & Wardwell LLP, special New York counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, substantially in the form of Exhibit J-1;

(ix) a favorable opinion of Richards, Layton & Finger, P.A., special Delaware counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, substantially in the form of Exhibit J-2;

(x) a favorable opinion of general counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, substantially in the form of Exhibit J-3;

(xi) a certificate signed by a Responsible Officer of the Borrower certifying that the conditions specified in Sections 4.01(b), (c) (first sentence only), (d), (g), (i) and (j) are satisfied;

(xii) a certificate attesting to the Solvency of the Borrower and its Subsidiaries, taken as a whole, from the Borrower's chief financial officer in the form of Exhibit H;

(xiii) a Committed Loan Notice relating to the initial Credit Extension;

(xiv) the Borrower shall have used its commercially reasonable efforts to cause to be issued customary endorsements naming the Administrative Agent,

on behalf of the Lenders, as an additional insured or loss payee, as the case may be, under all insurance policies maintained with respect to the properties of the Borrower and its subsidiaries forming part of the Collateral; and

(xv) certified copies of a certificate of merger or other confirmation reasonably satisfactory to the Administrative Agent of the consummation of the Acquisition from the Secretary of State of the State of Delaware;

(b) Acquisition. The Acquisition shall be consummated substantially concurrently with the initial funding of the Facilities in accordance with the Acquisition Agreement, without (i) any waiver or amendment thereof or any consent thereunder in any manner materially adverse to the Lenders or (ii) without limiting clause (i), any change in the amount or form of purchase price or any change in the structure of the Acquisition, in the case of each of clauses (i) and (ii), unless consented to by the Lead Arranger (such consent not to be unreasonably withheld or delayed).

(c) Refinancing. Immediately following the Transactions, neither the Borrower nor any of its subsidiaries shall have any Indebtedness for borrowed money or preferred equity other than (i) the Facilities, (ii) debt owed to, and preferred stock held by, the Borrower or any of its subsidiaries and (iii) other indebtedness in an aggregate principal amount not to exceed \$10,000,000 (or any larger amount agreed with the Lead Arranger). The Administrative Agent shall have received a "pay-off" letter in form and substance reasonably satisfactory to the Administrative Agent with respect to all debt being refinanced in the Refinancing; and the Administrative Agent shall have received from any person holding any Lien securing any such debt, such UCC termination statements, mortgage releases, releases of assignments of leases and rents, releases of security interests in Intellectual Property (as defined in the Security Agreement) and other instruments, in each case in proper form for recording, as the Administrative Agent shall have reasonably requested to release and terminate of record the Liens securing such debt, or authorization from such person for the Administrative Agent to file such statements, releases or other instruments.

(d) Compliance with Borrower's Existing Credit Facility. Unless the Lead Arranger shall have otherwise consented, from February 28, 2010 through the Closing Date, the Borrower shall have complied with Section 7.03 of the Borrower's Existing Credit Agreement without relying on the exceptions provided by clause (h) or (l) thereof and Section 7.06 of the Borrower's Existing Credit Agreement without relying on the exception provided by the proviso of clause (i) thereof (it being understood that the Borrower may consummate the Acquisition).

(e) Fees and Expenses. The Borrower shall have complied with all of its material obligations under, and the material terms of, the Fee Letter. All fees due to the Administrative Agent, the Lead Arranger and the Lenders shall have been paid, and all expenses to be paid or reimbursed to the Administrative Agent and the Lead Arranger that have been invoiced a reasonable period of time prior to the Closing Date shall have been paid, in each case, from the proceeds of the initial funding under the Facilities, plus such additional amounts of such fees, charges and disbursements of counsel as shall

constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

(f) Financial Statements. The Lead Arranger shall have received:

(i) as soon as available and in any event within 45 days after the end of each fiscal quarter subsequent to the fiscal year 2009 for each of the Borrower and the Acquired Business, unaudited consolidated statements of financial condition or balance sheets and related statements of income or operations and cash flows of each of the Borrower and the Acquired Business for such fiscal quarter, for the period elapsed from the beginning of the most recently completed fiscal year to the end of such fiscal quarter and for the comparable periods of the preceding fiscal year, for each of the Borrower and the Acquired Business (with respect to which the independent auditors shall have performed an SAS 100 review), and

(ii) pro forma consolidated statements of financial condition and related statements of income for the Borrower (the "Pro Forma Financial Statements") for fiscal year 2009 and for the latest four-quarter period ended with the latest period covered by the financial statements of the Borrower delivered pursuant to clause (i) above and the calculation of Pro Forma EBITDA (as defined in Section 4.01(g)), after giving effect to the Transactions.

(g) Maximum Leverage. The Lead Arranger shall be reasonably satisfied that the ratio of (i) Consolidated Funded Indebtedness (as defined in the Borrower's Existing Credit Agreement) of the Borrower on the Closing Date after giving effect to the Transactions to (ii) Pro Forma EBITDA shall be no more than 4.0 to 1.0. "Pro Forma EBITDA" means EBITDA (as defined below) of the Borrower for the four-quarter period ending with the latest fiscal quarter of the Borrower covered by the financial statements of the Borrower delivered pursuant to Section 4.01(f)(i), as adjusted to give pro forma effect, in accordance with Regulation S-X under the Securities Act of 1933, to the Transactions as if they had occurred at the beginning of such four-quarter period, and with such further adjustments reasonably satisfactory to the Lead Arranger (it being understood that up to \$20,000,000 of cost savings resulting from the Acquisition identified to the Lead Arranger prior to the date hereof may be included in the calculation of Pro Forma EBITDA). For the avoidance of doubt, in calculating Pro Forma EBITDA, the financial results of the Acquired Business for the latest four quarter period ending with the latest fiscal period for which financial statements of the Acquired Business are available prior to the Closing Date shall be used. For purposes of this definition and Section 4.01(g) only, "EBITDA" means consolidated net income attributable to the Borrower and its Subsidiaries plus (or minus), to the extent reducing (or increasing) such net income, interest expense (net), tax expense, depreciation, amortization, non-cash compensation expense, non-cash currency translation loss (or gain), impairment of goodwill and intangible assets, transaction fees and expenses related to the Transactions, restructuring charges

related to the Transactions and non-recurring expenses previously identified to the Lead Arranger of up to \$3,000,000 at the Acquired Business.

(h) USA Patriot Act. The Borrower and each of the Guarantors shall have provided the documentation and other information to the Administrative Agent that are required by regulatory authorities under applicable “know-your-customer” rules and regulations, including the USA Patriot Act, to the extent the Borrower shall have received written requests therefor at least five business days prior to the Closing Date.

(i) No Material Adverse Change on Acquired Business. Except as disclosed in any Company SEC Document (as defined in the Acquisition Agreement) filed after December 31, 2009 and before February 28, 2010 (excluding any information contained in any part thereof entitled “Risk Factors” or containing a description or explanation of “Forward-Looking Statements”) or as set forth in the Company Disclosure Schedule (as defined in the Acquisition Agreement), since December 31, 2009, there shall not have been any event, occurrence or development or state of circumstances or facts that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Change on the Acquired Business.

(j) Accuracy of Acquisition Agreement Representations and Specified Representations. On the Closing Date, (A) the representations and warranties made by the Acquired Business in the Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that Borrower has the right to terminate its obligations under the Acquisition Agreement as a result of a breach of such representations in the Acquisition Agreement (the “Acquisition Agreement Representations”) and (B) the Specified Representations (as defined below), shall be true and correct in all material respects. For purposes hereof, “Specified Representations” means the representations and warranties set forth in Sections 5.01 (with respect to the Loan Parties and the Loan Documents), 5.02(a), 5.04, 5.05(a) and (b), 5.14 and 5.18 and Section 7(j) of the Security Agreement (subject to limitations in the proviso to Section 4.01(a)(v)).

Without limiting the generality of the provisions of Section 9.04, 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.

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 Eurodollar Rate Loans) after the Closing Date is subject to the satisfaction (or waiver) of the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be

true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender 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 Eurodollar 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(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V REPRESENTATIONS AND WARRANTIES

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

5.01 Existence, Qualification and Power. Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transaction, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

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 (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 (other than Liens under the Collateral Documents) under, or require any payment (other than the Refinancing) to be made under (A) 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 (B) any 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, contravention, payment or violation

(but not creation of Liens) referred to in clause (b)(ii) or (iii), to the extent that such conflict, breach, contravention, payment or violation could not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transaction, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof contemplated thereunder) or (d) 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) the filing of UCC financing statements and filings to perfect security interests with the United States Patent and Trademark Office and the United States Copyright Office, (ii) the recordation of any Mortgage, (iii) any filings or recordations similar to those referred to in clauses (i) and (ii) required to be made in any foreign jurisdiction, (iv) such as have been made or obtained and are in full force and effect, (v) in the case of the Acquisition, filings in connection with the Acquisition as described in Sections 2.01(c) and 8.03 of the Acquisition Agreement, (vi) in the event of the sale upon foreclosure of any Pledged Equity, such as may be required by laws affecting the offering and sale of securities generally and (vii) such other items the failure to make or obtain which could not reasonably be expected to have a Material Adverse Effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as enforceability may be limited by applicable Debtor Relief Laws or similar laws affecting creditors' rights generally or by general principles of equity.

5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries and of the Acquired Business and its Subsidiaries, as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited financial statements delivered pursuant to Section 4.01(f) (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition and results of operations of the entities to which they relate as of

the dates and for the periods covered thereby, subject to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the balance sheet included in the Audited Financial Statements, 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.

(d) The consolidated forecasted business plans (including balance sheet, statements of income and cash flows prepared by management of the Borrower) of the Borrower and its Subsidiaries delivered pursuant to Section 6.01(c) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Borrower's good faith estimate of its future financial condition and performance (it being recognized by the Administrative Agent and the Lenders that such forecasted statements are not to be viewed as facts and that actual results during the period or periods covered thereby may vary and such variances may be material).

(e) The Pro Forma Financial Statements were prepared on a basis consistent with pro forma financial statements that would be set forth in a registration statement filed with the Securities and Exchange Commission and, to the extent applicable, in accordance with GAAP. The Pro Forma Financial Statements fairly present in all material respects the pro forma consolidated financial position and related results of operations of the Borrower as of the dates and for the periods covered thereby, assuming that the Transactions had occurred at the end of such period in the case of pro forma statements of financial position and at the beginning of such periods in the case of pro forma statements of income. The calculation of Pro Forma EBITDA delivered pursuant to Section 4.01(f)(ii) was prepared on a basis consistent with the Pro Forma Financial Statements with such adjustments thereto as are reasonably satisfactory to the Lead Arranger. The Pro Forma Financial Statements and such calculation of Pro Forma EBITDA were prepared in good faith by the Loan Parties, based on the assumptions stated therein (which assumptions are believed by the Loan Parties on the date hereof and on the Closing Date to be reasonable), and are based on the best information available to the Loan Parties as of the date of delivery thereof.

5.06 Litigation. Except as disclosed on Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) purport to restrain or contest entry into or performance under this Agreement or any other Loan Document or the consummation of the Transaction, or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

5.07 No Default. None of any Loan Party, any Subsidiary or, to the knowledge of the Borrower, any other party to any Contractual Obligation of any Loan Party or any Subsidiary is in default under or with respect to any such Contractual Obligation which default could, either individually or in the aggregate, reasonably be expected to have a Material Adverse

Effect. No Default has occurred and is continuing or would result from the consummation of the Transaction.

5.08 Ownership of Property; Liens.

(a) Each Loan Party and each of its Subsidiaries has good record and marketable title to, or valid leasehold interests in, all real property necessary in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. As of the Closing Date, no Loan Party owns any Material Real Property.

(b) The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens set forth on Schedule 5.08(b) or as otherwise permitted by Section 7.01.

(c) Schedule 5.08(c) sets forth a complete and accurate list of all real property owned by each Loan Party and each of its Subsidiaries as of the Closing Date, showing as of the Closing Date the street address, county or other relevant jurisdiction, state and record owner thereof.

5.09 Environmental Compliance. Except with respect to any matters that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, none of the Loan Parties nor any of their respective Subsidiaries (a) has failed to comply with any Environmental Law or to obtain, maintain or comply with any Environmental Permit or to provide any notification required under any Environmental Law or has become subject to any Environmental Liability or is conducting or financing any investigation, response or corrective action pursuant to any Environmental Law at any location; or (b) knows of any basis for Environmental Liability, except as disclosed on Schedule 5.09.

5.10 Insurance. The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

5.11 Taxes. The Borrower and its Subsidiaries have filed, or have caused to be filed, all Federal, state and other tax returns and reports required to be filed, and have paid, or have caused to be paid, all Federal, state and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (i) 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 or (ii) to the extent the failure to do any of the foregoing could not reasonably be expected to have a Material Adverse Effect. There is no proposed tax assessment against the Borrower or any of its Subsidiaries that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement other than one or more tax sharing agreements between or among Loan Parties and other Domestic Subsidiaries

and the tax sharing agreement between the Borrower and Morgan Stanley or its Affiliates (other than the Borrower and its Subsidiaries).

5.12 ERISA Compliance.

(a) Except with respect to any matter that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other Federal or state laws and (ii) each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Borrower, nothing has occurred which would prevent, or cause the loss of, such tax qualified status.

(b) There are no pending or, to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not reasonably be expected to have a Material Adverse Effect: (i) No ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) neither the Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (iv) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) all required minimum contributions to any Multiemployer Plan have been made.

(d) Neither the Borrower or any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (A) on the Closing Date, those listed on Schedule 5.12(d) hereto and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.

5.13 Subsidiaries; Equity Interests; Loan Parties. As of the Closing Date, no Loan Party has any Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are, if applicable, fully paid and non-assessable and, as of the Closing Date, are owned (other than with respect to director's qualifying shares and shares issued to foreign nationals to the extent required by applicable law) by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except those permitted under Section 7.01. As of the Closing Date, no Loan Party has any equity investments in any other corporation or entity (other than a

Subsidiary) other than those specifically disclosed in Part (b) of Schedule 5.13. Set forth on Part (c) of Schedule 5.13 is a complete and accurate list as of the Closing Date of all Loan Parties, showing as of the Closing Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number. As of the Closing Date, the copy of the charter of each Loan Party and each amendment thereto provided pursuant to Section 4.01(a)(vii) is a true and correct copy of each such document, each of which is valid and in full force and effect.

5.14 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock, in each case in violation of such Regulation U.

(b) None of the Loan Parties and their Subsidiaries is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.15 Disclosure. No report, financial statement, certificate or other information furnished in writing by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, taken as a whole with all such reports, financial statements, certificates or other information previously furnished, contains, when furnished, any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that (i) with respect to projected, pro forma or budgeted financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time such information was prepared (it being recognized by the Administrative Agent and the Lenders that such information is not to be viewed as facts and that actual results during the period or periods covered thereby may vary and such variances may be material) and (ii) the Borrower make no representation or warranty with respect to information of a general economic or general industry nature.

5.16 Compliance with Laws. Each Loan Party and each Subsidiary thereof is in compliance in all respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc. Except as set forth in Part (i) of Schedule 5.17 or would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, (ii) Part (ii) of Schedule 5.17 sets forth, as of the Closing Date, a complete and accurate list of all

registrations and applications for registration in respect of such material IP Rights owned by each Loan Party and each of its Subsidiaries and (iii) no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any of its Subsidiaries infringes upon any rights held by any other Person. Except as disclosed in Schedule 5.17, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Solvency. Immediately after consummation of the Transaction on the Closing Date, the Loan Parties, on a consolidated basis, are Solvent.

5.19 Anti-Money Laundering and Economic Sanctions Laws.

(a) No Loan Party, none of its Subsidiaries and, to the knowledge of senior management of each Loan Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Loan Party, such Subsidiary or Affiliate (i) has violated or is in violation of any applicable Anti-Money Laundering Law or (ii) has engaged or engages in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of offenses designated in any applicable law, regulation or other binding measure implementing the “Forty Recommendations” and “Nine Special Recommendations” published by the Organisation for Economic Co-operation and Development’s Financial Action Task Force on Money Laundering.

(b) No Loan Party, none of its Subsidiaries and, to the knowledge of senior management of each Loan Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Loan Party, such Subsidiary or such Affiliate that is acting or benefiting in any capacity in connection with the Loans is an Embargoed Person.

(c) Except as otherwise authorized by OFAC, no Loan Party, none of its Subsidiaries and, to the knowledge of senior management of each Loan Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Loan Party, such Subsidiary or such Affiliate acting or benefiting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Embargoed Person, (ii) deals in, or otherwise engages in any transaction related to, any property or interests in property blocked pursuant to any applicable Economic Sanctions Laws or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the applicable prohibitions set forth in any Economic Sanctions Laws.

ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than any Unmatured Surviving Obligations) hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless cash collateralized in a manner reasonably satisfactory to the L/C Issuer), the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Subsidiary to:

6.01 Financial Statements. Deliver to the Administrative Agent (which shall deliver to each Lender), in form and detail reasonably satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower, a consolidated statement of financial condition of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of Deloitte & Touche LLP or any other independent certified public accountant 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) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ending May 31, 2010), a consolidated statement of financial condition of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by the chief executive officer, chief financial officer, principal accounting officer, treasurer or controller of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event no later than sixty (60) days after the end of each fiscal year of the Borrower (starting with the fiscal year ending on or about November 30, 2010), an annual business plan of the Borrower and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Borrower (which are not required to be in accordance with GAAP) of consolidated statements of financial condition and statements of income and cash flows of the Borrower and its Subsidiaries on a quarterly basis for the immediately following fiscal year (including the fiscal year in which the Latest Maturity Date occurs) (it being recognized by the Administrative Agent and the Lenders that such information is not to be viewed as facts and that actual results during the period or periods covered thereby may vary and such variances may be material).

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

6.02 Certificates; Other Information. Deliver to the Administrative Agent (which shall deliver to each Lender), in form and detail reasonably satisfactory to the Administrative Agent:

- (a) starting with the fiscal quarter ending May 31, 2010 and concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, principal accounting officer, treasurer or controller of the Borrower (which delivery may, unless the Administrative Agent or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes);
- (b) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party, in each case, prepared by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them;
- (c) promptly after the same are available, copies of each annual report, proxy or financial statement or other material report or communication sent to the stockholders of the Borrower, and copies of all material annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 (other than registration statements on Form S-8 or exhibits to any of the foregoing), or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;
- (d) promptly after the furnishing thereof, copies of any material statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement involving Indebtedness then outstanding in an aggregate principal amount in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;
- (e) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each material notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any of its Subsidiaries; provided that the Borrower shall not be required to provide a copy of any such communication if the Borrower is prohibited or restricted by any applicable law or by the terms of such communication from providing such copy;
- (f) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), with respect to financial statements referred to in Section 6.01(a), a report supplementing Schedules I, II and VII to the Security Agreement and Schedule 5.08(c) hereto, in each case, to the extent necessary, including an identification of all owned real

property Disposed of by any Loan Party, if any, or any of its Subsidiaries since the delivery of the last supplements and a list and description of all Investment Property, Equity Interests, Pledged Debt, Promissory Notes, Pledged Deposit Accounts, Pledged Securities Accounts, Letters of Credit (as such terms are defined in the Security Agreement) and Material Real Property (including the street address, county or other relevant jurisdiction, state or other relevant jurisdiction, and the record owner) acquired, if any, since the delivery of the last supplements; and

(g) subject to the proviso to clause (e), promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any of its Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(a), (b), (c), (d) or (e) may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent, which shall notify each Lender, (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Lead 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 Subsidiaries, 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 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 Lead Arranger, 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 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent and the Lead Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

6.03 Notices. Promptly notify the Administrative Agent:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (but in each case only to the extent the same has resulted or could reasonably be expected to result in a Material Adverse Effect) (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any of its Subsidiaries; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any of its Subsidiaries and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any of its Subsidiaries, including pursuant to any applicable Environmental Laws; and

(c) of the occurrence of any ERISA Event.

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

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities in respect of (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property (other than any Lien permitted under Section 7.01); and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case (i) to the extent the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary or (ii) to the extent the failure to pay or discharge the same could not reasonably be expected to have a Material Adverse Effect.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Sections 7.03, 7.04 or 7.05 or in respect of an Immaterial Subsidiary; (b) take all commercially reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

and (c) except to the extent permitted by Section 7.05, take all commercially reasonable action to preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except, in each case with respect to clauses (a) and (b), where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance. Maintain or cause to be maintained (i) the insurance substantially similar to the insurance listed on Schedule 6.07 or (ii) with financially sound and reputable insurance companies not Affiliates of the Borrower, 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 as are customarily carried under similar circumstances by such other Persons and providing, in the case of all material insurance policies, for not less than 30 days' prior notice (or such shorter notice as acceptable to the Administrative Agent) to the Administrative Agent of termination, lapse or cancellation of such insurance.

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

6.09 Books and Records.

Maintain proper books of record and account (in which full, true and correct, in all material respects, entries shall be made of all material financial transactions and matters involving the assets and business of the Borrower and its Subsidiaries) in a manner that permits the preparation of financial statements in accordance with GAAP.

6.10 Inspection Rights.

(a) Permit representatives and independent contractors of the Administrative Agent 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 responsible for financial matters, and independent public accountants (at which authorized representatives of the Borrower shall be entitled to be present), 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, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than one (1) time during any calendar year absent the existence and continuance of an Event of Default; provided further that when an Event of Default exists the Administrative Agent or any

Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the reasonable expense of the Borrower at any time during normal business hours.

(b) At the request of the Administrative Agent, hold at least one meeting per fiscal year (at a mutually agreeable location, venue and time or, at the option of the Borrower, by conference call, the reasonable costs of such venue or call to be paid by Borrower) with all Lenders who choose to attend such meeting, at which meeting shall be reviewed the financial results of the previous fiscal year and the financial condition of the Borrower and its Subsidiaries and the budgets presented for the current fiscal year of the Borrower and its Subsidiaries.

6.11 Use of Proceeds. Use the proceeds of the Credit Extensions (i) in the case of the Term Loans incurred on the Closing Date, (A) to finance in part the Acquisition and (B) to finance in part the Refinancing and to pay fees and expenses incurred in connection with the Transaction and (ii) otherwise, to provide working capital for the Borrower and its Subsidiaries and for general corporate purposes, including Permitted Acquisitions, not in contravention of any Law or of any Loan Document.

6.12 Covenant to Guarantee Obligations and Give Security.

(a) Upon the formation or acquisition of any new direct or indirect Subsidiary that is a wholly-owned Material Domestic Subsidiary by any Loan Party, the Borrower shall, at the Borrower's expense (it being agreed and understood that any reference to any parent of a Subsidiary in this Section 6.12 shall not include any indirect or direct parent of the Borrower):

(i) within 30 days after such formation or acquisition (or such longer period as the Administrative Agent shall agree in its sole discretion), cause such Subsidiary, and cause each direct and indirect parent of such Subsidiary (if it has not already done so), to duly execute and deliver to the Administrative Agent a guaranty or guaranty supplement, substantially in the form attached to the Guaranty or otherwise in form and substance reasonably satisfactory to the Administrative Agent, guaranteeing the other Loan Parties' obligations under the Loan Documents,

(ii) within 15 days after such formation or acquisition (or such longer period as the Administrative Agent shall agree in its sole discretion), furnish to the Administrative Agent a description of any Material Real Property of such Subsidiary, in detail reasonably satisfactory to the Administrative Agent,

(iii) within 45 days after such formation or acquisition (or such longer period as the Administrative Agent shall agree in its sole discretion), cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to duly execute and deliver to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt and mortgages in respect of any Material Real Property of such Subsidiary and Security Agreement Supplements, IP Security Agreement Supplements and other security and pledge agreements, substantially in the applicable form (if any) attached to the Loan Documents or otherwise in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all Pledged Equity and Pledged Debt in and of such Subsidiary, and other instruments of the type specified in Section 4.01(a)), in each case

constituting Collateral), securing payment of all the Obligations of such Subsidiary or such parent, as the case may be, under the Loan Documents and constituting Liens on all such real and personal properties,

(iv) within 60 days after such formation or acquisition (or such longer period as the Administrative Agent shall agree in its sole discretion), cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to take all reasonable actions (including the recording of mortgages, the filing of UCC financing statements, the giving of notices and the endorsement of notices on title documents) as may be necessary to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the deeds of trust, trust deeds, deeds to secure debt, mortgages, Security Agreement Supplements, IP Security Agreement Supplements and security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms,

(v) within 60 days after such formation or acquisition (or such longer period as the Administrative Agent shall agree in its sole discretion), deliver to the Administrative Agent, upon the reasonable request of the Administrative Agent, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (i), (iii) and (iv) above, and as to such other matters as the Administrative Agent may reasonably request, and

(vi) as promptly as practicable after such formation or acquisition (or such longer period as the Administrative Agent shall agree in its sole discretion), deliver, upon the reasonable request of the Administrative Agent, to the Administrative Agent, with respect to each Material Real Property that is owned or held by the entity that is the subject of such formation or acquisition, title reports, surveys and engineering, soils and other reports, and environmental assessment reports, in the case of surveys and engineering, soils, environmental and other reports, which report is in possession or control of a Loan Party, each in scope, form and substance reasonably satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

(b) Upon the acquisition of any property (which, in the case of any real property, shall be limited to Material Real Property) of the type not excluded from the definition of "Collateral" by any Loan Party, and if such property, in the reasonable judgment of the Administrative Agent (to the extent such property is material), shall not already be subject to a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties, then the Borrower shall, upon the reasonable request of the Administrative Agent, at the Borrower's expense:

(i) within 15 days after such acquisition (or such longer period as the Administrative Agent shall agree in its sole discretion), furnish to the Administrative Agent a

description of the property so acquired in detail reasonably satisfactory to the Administrative Agent,

(ii) within 45 days after such acquisition (or such longer period as the Administrative Agent shall agree in its sole discretion), cause the applicable Loan Party to duly execute and deliver to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt, mortgages, mortgage modifications, Security Agreement Supplements, IP Security Agreement Supplements and other security and pledge agreements, substantially in the applicable form (if any) attached to the Loan Documents or otherwise in form and substance reasonably satisfactory to the Administrative Agent, securing payment of all the Obligations of the applicable Loan Party under the Loan Documents and constituting Liens on all such properties,

(iii) within 60 days after such acquisition (or such longer period as the Administrative Agent shall agree in its sole discretion), cause the applicable Loan Party to take all reasonable actions (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) as may be necessary to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on such property, enforceable against all third parties,

(iv) within 60 days after such acquisition (or such longer period as the Administrative Agent shall agree in its sole discretion), deliver to the Administrative Agent, upon the reasonable request of the Administrative Agent, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (ii) and (iii) above and as to such other matters as the Administrative Agent may reasonably request, and

(v) as promptly as practicable after any acquisition of a Material Real Property (or such longer period as the Administrative Agent shall agree in its sole discretion), deliver, upon the reasonable request of the Administrative Agent, to the Administrative Agent, with respect to such real property, title reports, surveys and engineering, soils and other reports, and environmental assessment reports, in the case of surveys and engineering, soils, environmental and other reports, which report is in possession or control of a Loan Party, each in scope, form and substance reasonably satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent,

(c) Upon the reasonable request of the Administrative Agent following the occurrence and during the continuance of an Event of Default, the Borrower shall, at the Borrower's expense:

(i) within 15 days after such request (or such longer period as the Administrative Agent shall agree in its sole discretion), furnish to the Administrative Agent a description

of the material real and personal properties of the Loan Parties in detail reasonably satisfactory to the Administrative Agent,

(ii) within 45 days after such request (or such longer period as the Administrative Agent shall agree in its sole discretion), duly execute and deliver, and cause each other Loan Party and each Material Domestic Subsidiary of the Borrower (if it has not already done so) to duly execute and deliver, to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt, mortgages, Security Agreement Supplements, IP Security Agreement Supplements and other security and pledge agreements, substantially in the applicable form (if any) attached to the Loan Documents or otherwise in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all Pledged Equity and Pledged Debt in and of such Subsidiary, and other instruments of the type specified in Section 4.01(a)(v), in each case constituting Collateral), securing payment of all the Obligations of the applicable Loan Party under the Loan Documents and constituting Liens on all such properties,

(iii) within 60 days after such request (or such longer period as the Administrative Agent shall agree in its sole discretion), take, and cause each Loan Party and each Material Domestic Subsidiary of the Borrower to take, all reasonable actions (including the recording of mortgages, the filing of UCC financing statements, the giving of notices and the endorsement of notices on title documents) as may be necessary to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the deeds of trust, trust deeds, deeds to secure debt, mortgages, Security Agreement Supplements, IP Security Agreement Supplements and security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms,

(iv) within 60 days after such request (or such longer period as the Administrative Agent shall agree in its sole discretion), deliver to the Administrative Agent, upon the reasonable request of the Administrative Agent, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (ii) and (iii) above, and as to such other matters as the Administrative Agent may reasonably request, and

(v) as promptly as practicable after such request (or such longer period as the Administrative Agent shall agree in its sole discretion), deliver, upon the reasonable request of the Administrative Agent, to the Administrative Agent with respect to each Material Real Property that is owned or held by any Loan Party, title reports, surveys and engineering, soils and other reports, and environmental assessment reports, in the case of surveys and engineering, soils, environmental and other reports, which report is in possession or control of a Loan Party, each in scope, form and substance reasonably satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

(d) At any time upon reasonable request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such guaranties, deeds of trust, trust deeds, deeds to secure debt, mortgages, Security Agreement Supplements, IP Security Agreement Supplements and other security and pledge agreements.

(e) Notwithstanding anything to the contrary in this Section, neither the Borrower nor any of its Subsidiaries shall be required to execute or deliver any instrument or document or take any action with respect to any property or asset (i) that is excluded from the definition of Collateral pursuant to the terms of the Security Agreement or (ii) as to which the Administrative Agent and the Borrower reasonably determine in writing that the costs of taking such action are excessive in relation to the benefit to the Lenders of the security to be afforded thereby.

6.13 Compliance with Environmental Laws. Except to the extent that the failure to do any of the following could not, individually or in the aggregate, be reasonably likely to result in a Material Adverse Effect, (i) comply and use commercially reasonable efforts to cause all lessees and other Persons operating or occupying its properties to comply in all material respects with all applicable Environmental Laws and Environmental Permits; (ii) obtain and renew all Environmental Permits necessary for its operations and properties; and (i ii) conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, as required by applicable Environmental Laws; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.14 Further Assurances. Promptly upon the reasonable request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law but subject to Section 6.12(e), subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

6.15 Compliance with Terms of Leaseholds. Make all payments and otherwise perform all obligations in respect of all leases of real property to which the Borrower or any of its Subsidiaries is a party, except, in any case, where (i) any obligation thereunder is being contested in good faith and appropriate reserves are being maintained with respect thereto to the extent required by GAAP or (ii) the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

6.16 Interest Rate Hedging. Enter into prior to the date that is 60 days after the Closing Date (or such later date agreed to by the Administrative Agent) and maintain at all times thereafter until the second anniversary of the Closing Date, interest rate Swap Contracts on terms and with Persons reasonably acceptable to the Administrative Agent, covering a notional amount such that at least 30% of the Term Loans (taking into account the scheduled amortization of the Term Loans) bears interest at a fixed or maximum rate.

6.17 Material Contracts. Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, except, in any case, where (i) any obligation thereunder is being contested in good faith and appropriate reserves are being maintained with respect thereto to the extent required by GAAP or (ii) the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.18 Maintenance of Ratings. Use commercially reasonable efforts to cause Borrower's corporate credit to continue to be rated by S&P and Moody's (but not to maintain a specific rating).

ARTICLE VII NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than any Unmatured Surviving Obligations) hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless cash collateralized in a manner reasonably satisfactory to the L/C Issuer), the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

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, or sign or file under the Uniform Commercial Code of any jurisdiction a financing statement that names the Borrower or any of its Subsidiaries as debtor, or assign any accounts or other right to receive income, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the date hereof and listed on Schedule 5.08(b) and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(d), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(d);

(c) Liens for taxes, assessments or other governmental charges or levies not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) landlords', carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business securing obligations which are not overdue for a period of more than 60 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required under GAAP;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation;

(f) deposits to secure the performance of tenders, bids, trade contracts and leases (other than Indebtedness), statutory or regulatory obligations, surety bonds, insurance obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) minor defects or minor imperfections in title and zoning, land use and similar restrictions and easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person, and, in the case of any real property covered by any Mortgage, any Permitted Encumbrances with respect thereto;

(h) Liens securing judgments not constituting an Event of Default under Section 8.01(h), or securing appeal or other surety bonds related to such judgments;

(i) Liens securing Indebtedness permitted under Section 7.02(f); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness (or any Permitted Refinancing thereof) and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(j) Liens existing on property at the time of its acquisition or existing on property of a Person at the time such Person is merged into or consolidated with the Borrower or any Subsidiary of the Borrower or becomes a Subsidiary of the Borrower (other than Liens on the Equity Interests of any Person that becomes a Subsidiary); provided that such Liens were not created in contemplation of such acquisition, merger, consolidation or Investment and do not extend to any assets other than such acquired property or those of the Person merged into or consolidated with the Borrower or such Subsidiary or acquired by the Borrower or such Subsidiary, and the applicable Indebtedness secured by such Lien is permitted under Section 7.02;

- (k) leases, licenses, subleases or sublicenses granted to other Persons in the ordinary course of business which do not (A) interfere in any material respect with the business of the Loan Parties or (B) secure any Indebtedness for borrowed money;
- (l) any interest or title of (A) a lessor or sublessor under any lease or sublease or (B) a licensor or sublicensor under any license or sublicense, in each case entered into in the ordinary course of business, so long as such interest or title relate solely to the assets subject thereto;
- (m) banker's liens, rights of setoff and other similar Liens that are customary in the banking industry and existing solely with respect to cash and other amounts on deposit in one or more accounts (including securities accounts) maintained by the Borrower or its Subsidiaries;
- (n) Liens of a collecting bank arising under Section 4-208 (or its equivalent) of the UCC on items in the course of collection and documents and proceeds related thereto;
- (o) Liens arising from precautionary filings of financing statements under the Uniform Commercial Code of any applicable jurisdiction in respect of operating leases or consignments entered into by the Borrower or its Subsidiaries in the ordinary course of business;
- (p) Liens attaching to cash earnest money deposits in connection with any letter of intent or purchase agreement permitted hereunder and Liens on cash deposits held in escrow accounts pursuant to the terms of any purchase agreement permitted hereunder;
- (q) Liens in the nature of trustee's Liens granted pursuant to any indenture governing any Indebtedness for borrowed money permitted by Section 7.02, in each case in favor of the trustee under such indenture and securing only obligations to pay compensation to such trustee, to reimburse its expenses and to indemnify it under the terms thereof;
- (r) Liens on assets of Foreign Subsidiaries securing obligations of such Foreign Subsidiaries permitted hereunder;
- (s) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;
- (t) assignments of accounts or other rights to receive income to the extent permitted under Section 7.05;
- (u) escrow deposits of source code in the ordinary course of business in connection with the licensing of intellectual property by the Borrower or any of its Subsidiaries to their customers;

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

(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; and

(x) other Liens so long as the aggregate outstanding amount of Indebtedness and other obligations secured thereby does not exceed \$25,000,000.

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

(a) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that such obligations are (or were) entered into by such Person in the ordinary course of business or pursuant to Section 6.16 (and not for speculative purposes) for the purpose of directly mitigating risks associated with fluctuations in interest rates, commodity prices or foreign exchange rates;

(b) Indebtedness of a Subsidiary of the Borrower owed to the Borrower or another Subsidiary of the Borrower or of the Borrower owed to a Subsidiary of the Borrower, which Indebtedness shall (i) in the case of Indebtedness owed to a Loan Party, constitute "Pledged Debt" under the Security Agreement, (ii) in the case of Indebtedness owed by a Loan Party to a non-Loan Party, be subordinated to the Obligations on terms reasonably acceptable to the Administrative Agent and (iii) be otherwise permitted under the provisions of Section 7.03;

(c) Indebtedness under the Loan Documents;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any Permitted Refinancing thereof;

(e) (i) Guarantees of any Loan Party in respect of Indebtedness otherwise permitted hereunder of the Borrower or any Subsidiary; provided that 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 provisions of such Indebtedness, and (ii) Guarantees of any Subsidiary that is not a Loan Party in respect of Indebtedness otherwise permitted hereunder of any Subsidiary that is not a Loan Party;

(f) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i) and any Synthetic Debt, and any Permitted Refinancing thereof; provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$25,000,000;

(g) Indebtedness of any Person that becomes a Subsidiary of the Borrower after the date hereof in accordance with the terms of Section 7.03, which Indebtedness is existing at the time such Person becomes a Subsidiary of the Borrower and was not incurred solely in contemplation of such Person's becoming a Subsidiary of the Borrower, and any Permitted Refinancing thereof;

(h) Indebtedness representing deferred compensation to employees of the Borrower or any of its Subsidiaries incurred in the ordinary course of business;

(i) Indebtedness consisting of deferred purchase price or notes issued to current or former officers, managers, consultants, directors and employees (or their respective estates, spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) to finance the purchase or redemption of Equity Interests of the Borrower in an aggregate principal amount not to exceed \$5,000,000;

(j) unsecured Indebtedness in an aggregate principal amount not to exceed \$250,000,000 at any time outstanding;

(k) Indebtedness in respect of (i) performance bonds, bid bonds, surety bonds, workers' compensation claims, performance and completion guarantees and similar obligations, in each case provided in the ordinary course of business, and (ii) appeal bonds;

(l) Obligations under any Cash Management Agreement, and Indebtedness consisting of netting arrangements and overdraft protections, incurred in the ordinary course of business;

(m) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business; provided that such Indebtedness is promptly covered by the Borrower or any Subsidiary;

(n) Indebtedness of Foreign Subsidiaries in an aggregate principal amount not exceeding \$20,000,000 at any time outstanding;

(o) Indebtedness incurred by the Borrower or any of its Subsidiaries in a Permitted Acquisition or any other Investment expressly permitted hereunder, in each case to the extent constituting indemnification obligations, incentive, non-compete or other similar arrangements, or obligations in respect of purchase price (including earn-outs) or other similar adjustments;

(p) Indebtedness of any Loan Party or other Subsidiary of the Borrower on account of or in respect of letters of credit obtained in the ordinary course of business in connection with foreign operations or branches in an aggregate principal amount not exceeding \$10,000,000 at any time outstanding;

(q) Indebtedness owing to any insurance company in connection with the financing of any insurance premiums permitted by such insurance company in the ordinary course of business;

(r) (x) unsecured Indebtedness of the Borrower so long as the Net Cash Proceeds thereof are used to fund Permitted Acquisitions, and any Permitted Refinancing thereof, and (y) guarantees by the Guarantors of the Indebtedness of the Borrower incurred pursuant to clause (x); provided that (i) no Default shall exist immediately prior to or immediately after such incurrence, (ii) such Indebtedness shall be subordinated in right of payment to the Obligations under the Loan Documents on terms and pursuant to documentation reasonably satisfactory to the Administrative Agent and (iii) such Indebtedness shall (A) require no amortization payments, and shall not have a scheduled maturity, prior to the date that is 180 days following the Latest Maturity Date; (B) not have covenants or events of default that, taken as a whole, are more restrictive than the covenants and events of default included in this Agreement (as determined in good faith by the Borrower), or shall have such covenants and events of default as are otherwise reasonably satisfactory to the Administrative Agent, (C) not include any mandatory prepayment, redemption or repurchase provisions (other than provisions requiring offers to purchase upon asset sales, casualty events, condemnation events and change of control, and acceleration provisions, in each case, that are customary for high yield debt securities (as determined in good faith by the Borrower) and are subject to, if appropriate, reinvestment of the proceeds in the business or prior payment of the Obligations under the Loan Documents) that would apply prior to the date that is 180 days following the Latest Maturity Date at the time of incurrence, or shall have such mandatory prepayment, redemption or repurchase provisions as are otherwise reasonably acceptable to the Administrative Agent and (D) not include any financial maintenance covenants;

(s) (x) unsecured Indebtedness of the Borrower so long as the Net Cash Proceeds thereof are used to prepay the Term Loans in accordance with Sections 2.05(b)(iii) and (iv), and any Permitted Refinancing thereof, and (y) guarantees by the Guarantors of the Indebtedness of the Borrower incurred pursuant to clause (x); provided that (i) no Default shall exist immediately prior to or immediately after such incurrence and (ii) such Indebtedness shall (A) require no amortization payments, and shall not have a scheduled maturity, prior to the date that is 180 days following the Latest Maturity Date; (B) not have covenants or events of default that, taken as a whole, are more restrictive than the covenants and events of default included in this Agreement (as determined in good faith by the Borrower), or shall have such covenants and events of default as are otherwise reasonably satisfactory to the Administrative Agent, (C) not include any mandatory prepayment, redemption or repurchase provisions (other than provisions requiring offers to purchase upon asset sales, casualty events, condemnation events and change of control, and acceleration provisions, in each case, that are customary for high yield debt securities (as determined in good faith by the Borrower) and are subject to, if appropriate, reinvestment of the proceeds in the business or prior payment of the Obligations under the Loan Documents) that would apply prior to the date that is 180 days following the Latest Maturity Date at the time of incurrence, or shall have such mandatory prepayment, redemption or

repurchase provisions as are otherwise reasonably acceptable to the Administrative Agent and (D) not include any financial maintenance covenants;

(t) Indebtedness incurred by the Borrower or any of its Subsidiaries constituting reimbursement obligations with respect to letters of credit, bank guarantees or similar instruments issued 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 similar reimbursement-type obligations; provided that upon the drawing of such instruments, such obligations are reimbursed within 30 days following such drawing; and

(u) other Indebtedness in an aggregate principal amount not to exceed \$5,000,000 at any time outstanding.

It is understood and agreed that any Indebtedness borrowed in a foreign currency shall continue to be permitted under this Section 7.02 notwithstanding any fluctuation in the Dollar amount of such Indebtedness, as long as the outstanding principal balance of such Indebtedness (denominated in its original currency) does not exceed the maximum amount of such Indebtedness (denominated in such currency) permitted to be outstanding on the date such Indebtedness was incurred.

7.03 Investments. Make or hold any Investments, except:

(a) Investments held by the Borrower and its Subsidiaries in the form of Cash Equivalents;

(b) advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed \$4,000,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) (i) Investments by the Borrower and its Subsidiaries in Loan Parties, (ii) Investments by Subsidiaries of the Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iii) so long as no Event of Default has occurred and is continuing at the time of or would result from such Investment, additional Investments by the Loan Parties in Subsidiaries that are not Loan Parties in an aggregate amount not to exceed \$20,000,000 at any time outstanding;

(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 in connection with the settlement of delinquent accounts generated in the ordinary course of business or from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 7.02 and Guarantees of obligations (other than Indebtedness) of the Borrower and its Subsidiaries not prohibited hereunder and entered into in the ordinary course of business;

(f) (i) Investments existing on the date of this Agreement and set forth on Schedule 5.13 and (ii) Investments pursuant to any cash management arrangements with Morgan Stanley or any of its Affiliates (other than the Borrower and its Subsidiaries) in a manner consistent with past practices;

(g) Investments in Swap Contracts permitted under Section 7.02(a);

(h) the purchase or other acquisition of Equity Interests in, or all or substantially all of the assets or business of, any Person, or of assets constituting a business unit, a line of business or division of, such Person that, upon the consummation thereof, will be a Subsidiary of the Borrower or will be owned by the Borrower or a Subsidiary of the Borrower (including as a result of a merger or consolidation); provided that, with respect to each purchase or other acquisition made pursuant to this Section 7.03(h) (each of the foregoing, a "Permitted Acquisition");

(i) any such newly-created or acquired Subsidiary and each applicable Loan Party shall comply, to the extent required, with the requirements of Section 6.12;

(ii) such purchase or other acquisition shall not include or result in any contingent liabilities that could reasonably be expected to have a Material Adverse Effect on the Borrower and its Subsidiaries, taken as a whole (as determined in good faith by the board of directors (or the persons performing similar functions) of the Borrower if the board of directors is otherwise approving such transaction and, in each other case, by a Responsible Officer of the Borrower);

(iii) the total consideration and all assumptions of debt in connection therewith (but excluding the portion paid with Qualified Equity Interests of the Borrower or Equity Net Cash Proceeds from issuance of Qualified Equity Interests of the Borrower that are Not Otherwise Applied) paid by or on behalf of the Borrower and its Subsidiaries for all such purchases or acquisitions pursuant to this Section 7.03(h) attributable to acquisitions of Persons that do not become Guarantors or of assets by Subsidiaries that are not or do not become Guarantors (including as a result of a merger or consolidation) shall not exceed \$150,000,000 in the aggregate in any fiscal year of the Borrower;

(iv) (A) immediately before and immediately after giving pro forma effect to any such purchase or other acquisition, no Default shall have occurred and be continuing and (B) immediately after giving effect to such purchase or other acquisition, the Borrower and its Subsidiaries shall, on a Pro Forma Basis, be in compliance with all of the covenants set forth in Section 7.11; and

(v) the Borrower shall have delivered to the Administrative Agent, on behalf of the Lenders, at least five Business Days (or a shorter period reasonably approved by the Administrative Agent) prior to the date on which any such purchase or other acquisition is to be consummated, a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent,

certifying that all of the requirements set forth in this Section 7.03(h) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition (or, in the case of the requirements of clause (i), will, to the extent applicable, be satisfied within the time periods specified for such satisfaction in Section 6.12);

- (i) other Investments (including joint venture and minority investments) not exceeding \$20,000,000 in the aggregate in any fiscal year of the Borrower;
- (j) advances of payroll payments to employees in the ordinary course of the business;
- (k) loans to directors, officers and employees to purchase Qualified Equity Interests of the Borrower in an aggregate principal amount not to exceed \$7,500,000 at any time outstanding;
- (l) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, other Investments in an amount not to exceed 100% of Cumulative Excess Cash Flow that is Not Otherwise Applied;
- (m) Investments (A) received in satisfaction or partial satisfaction of accounts from financially troubled account debtors (whether in connection with a foreclosure, bankruptcy, workout or otherwise) and (B) consisting of deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of the Borrower and its Subsidiaries;
- (n) the Borrower and its Subsidiaries may (A) acquire and hold accounts receivable owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, (B) endorse negotiable instruments held for collection or deposit in the ordinary course of business, (C) make lease, utility and other similar deposits (or prepayment thereof) in the ordinary course of business and (D) make pledges and deposits permitted by Section 7.01;
- (o) Investments made as a result of the receipt of non-cash consideration from a sale, transfer or other disposition of any asset in compliance with Section 7.05;
- (p) Investments of any Person existing at the time such Person becomes a Subsidiary of the Borrower or consolidates or merges with the Borrower or any of the Subsidiaries (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such consolidation or merger;
- (q) Investments to the extent that payment for such investments is made solely with Qualified Equity Interests of the Borrower (or Equity Net Cash Proceeds of the issuance thereof that are Not Otherwise Applied);

(r) Investments consisting of any amounts paid pursuant to any contracts with any Subsidiary, or in respect of any Foreign Subsidiary's operations, providing for payment of amounts on a "cost" or "cost-plus" basis for services performed, or in the form of guarantees of leases or licenses in the ordinary course of business; and

(s) the Acquisition.

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, except that, except in the case of a transaction contemplated under clause (g) (which transaction shall be permitted whether or not an Event of Default exists or would result therefrom) so long as no Event of Default exists or would result therefrom:

(a) any Subsidiary may merge or consolidate with or into or may liquidate into (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Loan Party is merging or consolidating with or liquidating into another Subsidiary, a Loan Party shall be the continuing or surviving Person;

(b) any Loan Party (other than the Borrower) may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to (i) any other Loan Party or (ii) any Subsidiary that is not a Loan Party in connection with an Investment permitted under Section 7.03;

(c) any Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party;

(d) in connection with any acquisition permitted under Section 7.03, any Subsidiary of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that (i) if the Subsidiary party to such merger or consolidation was, immediately prior thereto, a wholly owned Subsidiary of the Borrower, the Person surviving such merger shall be a wholly-owned Subsidiary of the Borrower (it being agreed, however, that this proviso shall not prevent any transaction contemplated by Section 7.03(h)(iii)) and (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving Person;

(e) in the case of any Subsidiary of the Borrower, pursuant to a transaction otherwise permitted by Section 7.05 (other than Section 7.05(e));

(f) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; and

(g) the Borrower may consummate the Acquisition and the transaction contemplated thereby.

7.05 Dispositions. Make any Disposition, except:

(a) Dispositions of obsolete, excess or worn out property or property no longer used in the business of the Borrower or its Subsidiaries, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of inventory or products in the ordinary course of business and the granting of any option or other right to purchase, lease or otherwise acquire inventory or products in the ordinary course of business;

(c) Dispositions of equipment or real 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 reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Borrower or any of its Subsidiaries; provided that if the transferor of such property is a Loan Party, the transferee thereof must be a Loan Party;

(e) Dispositions permitted by Section 7.04;

(f) Dispositions by the Borrower and its Subsidiaries of property pursuant to sale-leaseback transactions, provided that the book value of all property so Disposed of shall not exceed (i) \$25,000,000 from and after the Closing Date or (ii) \$5,000,000 in any fiscal year;

(g) leases, subleases, licenses or sublicenses of real or personal property in the ordinary course of business, in each case that do not materially interfere with the business of the Borrower and its Subsidiaries;

(h) additional Dispositions by the Borrower and its Subsidiaries; provided that (i) at the time of such Disposition, no Event of Default shall exist or would result from such Disposition, (ii) the aggregate fair market value of all property Disposed of in reliance on this clause (h) shall not exceed \$150,000,000 and (iii) the purchase price for such asset shall be paid to the Borrower or such Subsidiary at least 75% in cash;

(i) so long as no Event of Default shall occur and be continuing, the grant of any option or other right to purchase any asset in a transaction that would be permitted under the provisions of Section 7.05(h);

(j) Disposition of Cash Equivalents;

(k) Disposition of Qualified Equity Interests of the Borrower otherwise permitted hereunder;

(l) discounts or forgiveness of accounts receivable in the ordinary course of business and/or sales thereof in connection with collection or compromise thereof;

(m) cancellations of any intercompany Indebtedness among the Loan Parties or among the non-Loan Parties;

(n) subject to the provisions in the Security Agreement, Dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights (other than any Material Intellectual Property) which, in the good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and its Subsidiaries;

(o) to the extent required by applicable law, the sale or other disposition of a nominal amount of Equity Interests in any Foreign Subsidiary in order to qualify members of the board of directors or equivalent governing body of such Person;

(p) transfer of property subject to Casualty Events upon receipt of the Net Cash Proceeds of such Casualty Event;

(q) 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;

(r) Investments permitted by Section 7.03 and Restricted Payments permitted under Section 7.06; and

(s) Disposition of Subsidiaries of the Borrower listed in Schedule 7.05

; provided, however, that any Disposition pursuant to Section 7.05 (except pursuant to Sections 7.05(e), (l), (m), (n), (o), (p), (r) and (s) and except for Disposition made from a Loan Party to another Loan Party or from a non-Loan Party to another non-Loan Party) shall be for fair market value.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary may make Restricted Payments to any Loan Party, and any other Person that owns a direct Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) any Loan Party may make Restricted Payments to, or issue or sell any Equity Interests to, or accept any capital contribution from, any other Loan Party;

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

(d) the Borrower and each Subsidiary may purchase, redeem or otherwise acquire its Qualified Equity Interests with the proceeds received from the substantially concurrent issue of new Qualified Equity Interests;

(e) the Borrower may repurchase its Equity Interests from current or former directors, officers or employees of the Borrower or any of its Subsidiaries, their estates, spouses or former spouses or make payments to such persons upon termination of employment or directorship, in connection with stock options, stock appreciation rights or other equity or equity-based incentives pursuant to incentive plans or in connection with the death or disability of such persons in an aggregate amount not to exceed \$5,000,000 in any fiscal year;

(f) the Borrower may repurchase, cancel or withhold Equity Interests to the extent (x) such repurchase is deemed to occur upon or in connection with the exercise or vesting of any options, warrants or other equity awards and (y) such Equity Interests (i) represent a portion of the purchase price of such options, warrants or other equity awards or (ii) are repurchased, cancelled or withheld to facilitate the satisfaction of any tax liabilities incurred upon or in connection with the exercise or vesting of any options, warrants or other equity awards;

(g) the Borrower may make cash payments in lieu of issuing fractional or "odd lot" Equity Interests in connection with the Acquisition and other Permitted Acquisitions; and

(h) in addition to the foregoing Restricted Payments, so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may make additional Restricted Payments in an aggregate amount not to exceed \$10,000,000 in any fiscal year; provided that, so long as the Consolidated Leverage Ratio as of the date of the making of any such Restricted Payment is not greater than 2.0 to 1.0 (calculated on a Pro Forma Basis and after giving pro forma effect to any such Restricted Payment), such amount may be increased by an amount equal to 100% of Cumulative Excess Cash Flow that is Not Otherwise Applied.

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 its Subsidiaries on the date of this Agreement or any business substantially related, incidental or complementary thereto.

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 on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to (i) transactions between or among the Loan Parties or transactions between or among Subsidiaries of the Borrower that are not Loan Parties or transactions between a Loan Party and a Subsidiary that is not a Loan Party so long as the terms of such transaction are no less favorable to the Loan Party than it would obtain in a comparable arm's length transaction with a Person not

an Affiliate; (ii) Restricted Payments permitted to be made pursuant to Section 7.06 and Investments permitted under Section 7.03 and intercompany transactions, including intercompany Indebtedness and asset transfers, expressly permitted hereunder, (iii) customary directors' fees and expenses, (iv) employment agreements, employee benefit and compensation plans, as determined in good faith by the board of directors or senior management of the Borrower, (v) payments under customary officers' and directors' indemnification arrangements, (vi) any tax sharing agreements or arrangements among Loan Parties and other Domestic Subsidiaries entered into in the ordinary course of business or with Morgan Stanley or its Affiliates (other than the Borrower and its Subsidiaries), and any payments in connection therewith or (viii) transactions in which the Borrower or any Subsidiary delivers to the Administrative Agent a letter from an accounting, appraisal or investment banking firm of national standing stating that such transaction is fair to the Borrower or such Subsidiary from a financial point of view and which are approved by a majority of the disinterested members of the board of directors of the Borrower in good faith.

7.09 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to any Loan Party or to otherwise transfer property to or invest in any Loan Party, except for any agreement in effect (A) on the date hereof and set forth on Schedule 7.09 or (B) at the time any Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower, (ii) of any Material Domestic Subsidiary to Guarantee the Obligations hereunder or (iii) of the Borrower or any other Loan Party to create, incur, assume or suffer to exist Liens on property of such Person securing the Obligations hereunder; provided, however, that this clause (iii) shall not prohibit any negative pledge or restriction incurred or provided in favor of any holder of any secured Indebtedness permitted under Section 7.02 solely to the extent any such negative pledge or restriction relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant by a Loan Party of a Lien to secure an obligation of such Person if a Lien is granted to secure the Obligations hereunder or refinancings hereof; provided, however, that the foregoing shall not apply to Contractual Obligations which (A) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 7.03 and applicable solely to such joint venture, (B) are customary restrictions on leases, subleases, licenses or sublicenses otherwise permitted hereunder so long as such restrictions relate solely to the assets subject thereto, (C) are customary anti-assignment provisions in contracts restricting the assignment of any agreement entered into in the ordinary course of business, (D) are customary restrictions in contracts for the Disposition of any assets or any Subsidiary permitted by Section 7.05, provided that the restrictions in any such contracts shall apply only to such assets or Subsidiary that is to be Disposed of, (E) are customary provisions in leases of real property that prohibit mortgages or pledges of the lessee's interest under such lease, (F) are limitations imposed on any Subsidiary that is not a Loan Party by the terms of any Indebtedness permitted hereunder if such limitation applies only to the assets or property of such Subsidiary securing such Indebtedness, (G) are in effect at the time any Person becomes a Subsidiary and not created in anticipation thereof, (H) (x) exist on the date hereof and are identified on Schedule 7.09 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 renewal, extension or refinancing of such Indebtedness so long as such renewal, extension or refinancing does not expand the scope of such Contractual

Obligations, (I) are restrictions contained in the terms of any Indebtedness permitted hereunder or any agreement pursuant to which such Indebtedness was issued if (x) such restriction applies only in the event of a payment default or a default with respect to a financial covenant contained in such Indebtedness or agreement or such restriction is not more restrictive as to any Subsidiary than the restrictions applicable to such Subsidiary contained in this Agreement and (y) the Borrower determines that any such restriction will not materially affect the Borrower's ability to make principal or interest payments on the Loans, (J) are provisions imposed by any instrument or agreement governing Indebtedness of any Subsidiary that is not a Loan Party which is permitted by Section 7.02 or (K) arise under applicable law.

7.10 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case, in violation of such Regulation U of the FRB.

7.11 Financial Covenants.

(a) Consolidated Interest Coverage Ratio. Permit the Consolidated Interest Coverage Ratio as of the end of any fiscal quarter of the Borrower ending during any period set forth below to be less than the ratio set forth below opposite such period:

Four Fiscal Quarters Ending	Minimum Consolidated Interest Coverage Ratio
Closing Date through February 28, 2011	4.50:1.00
March 1, 2011 and thereafter	5.00:1.00

(b) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as of the end of any fiscal quarter of the Borrower ending during any period set forth below to be greater than the ratio set forth below opposite such period:

Four Fiscal Quarters Ending	Maximum Consolidated Leverage Ratio
Closing Date through February 28, 2011	4.00:1.00
March 1, 2011 through May 31, 2011	3.75:1.00
June 1, 2011 through August 31, 2011	3.50:1.00
September 1, 2011 through December 31, 2011	3.25:1.00
January 1, 2012 and thereafter	2.75:1.00

7.12 Capital Expenditures.

Make any Capital Expenditure, except for Capital Expenditures not exceeding, in the aggregate for the Borrower and its Subsidiaries during each fiscal year set forth below, the amount set forth opposite such fiscal year:

Fiscal Year Ending November 30,	Amount
2010	\$15,000,000
2011	\$35,000,000
2012	\$40,000,000
2013	\$45,000,000
2014	\$45,000,000
2015	\$50,000,000
2016	\$55,000,000

; provided, however, that, for this Section 7.12 only, for the fiscal year ended November 30, 2010, the beginning of such fiscal year shall be deemed to be the Closing Date; and provided further that any portion of any amount set forth above, if not expended in the fiscal year for which it is permitted above, may be carried over for expenditure in the immediately following fiscal year; and provided further that if any such amount is so carried over, it will be deemed used in the applicable subsequent fiscal year before the amount set forth opposite such fiscal year above. In addition to the foregoing Capital Expenditures, the Borrower and its Subsidiaries may make additional Capital Expenditures in an aggregate amount not to exceed 100% of Cumulative Excess Cash Flow that is Not Otherwise Applied.

7.13 Amendments of Organization Documents and Indebtedness. Amend any of its Organization Documents or amend, modify or change in any manner any term or condition of any Indebtedness set forth in Schedule 7.02 the outstanding principal amount of which exceeds the Threshold Amount, except for any refinancing, refunding, renewal or extension thereof permitted by Section 7.02(d), in each case in a manner materially adverse to the Lenders or the Administrative Agent.

7.14 Accounting Changes. Make (a) any change in accounting policies or reporting practices, except as required or permitted by GAAP or otherwise not materially adverse to the Lenders, or (b) any change to its fiscal year; provided that the Borrower may, upon written notice to the Administrative Agent change the fiscal year end to a fiscal year ending December 31, with corresponding changes to its fiscal quarters, in which case the Borrower and the Administrative Agent will, and are hereby authorized by the other parties hereto to, make any adjustments to this Agreement that are necessary to effect such change.

7.15 Prepayments, Etc. of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any subordinated Indebtedness or any Indebtedness incurred pursuant to Section 7.02(j) or (s), except (a) in connection with any Permitted Refinancing thereof that is expressly permitted to be incurred pursuant to Section 7.02, (b) the conversion of any such Indebtedness to Equity Interests (other than Disqualified Equity Interests), (c) with respect to intercompany subordinated Indebtedness, to the extent consistent with the terms thereof, (d) payments of regularly scheduled principal and interest, (e) any purchases of Indebtedness pursuant to offers to purchase required with proceeds of asset sales, casualty events or condemnation events or upon a change of control, which provisions are customary for high yield debt securities (as determined in good faith by the Borrower); provided that the Borrower shall have first complied with the mandatory prepayment provisions hereunder in connection with such

asset sales, casualty events and condemnation event or obtained a waiver hereunder in connection with such change of control, as the case may be, and (f) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, prepayments, redemption, purchases, defeasances or other satisfaction in an aggregate principal amount not to exceed the sum of (A) 100% of Cumulative Excess Cash Flow that is Not Otherwise Applied, (B) the Equity Net Cash Proceeds from the sale or issuance of Qualified Equity Interests of the Borrower that are Not Otherwise Applied and (C) \$10,000,000.

7.16 Equity Interests of Wholly-Owned Subsidiaries. Permit any wholly owned Subsidiary to become a non-wholly owned Subsidiary, except (i) as a result of or in connection with a dissolution, liquidation, merger, consolidation, amalgamation or disposition of a Subsidiary permitted by Section 7.04 or 7.05 or an Investment permitted by Section 7.03, (ii) so long as such Subsidiary continues to be a Guarantor or (iii) as a result of any sale or issuance of Equity Interests of any Foreign Subsidiary otherwise permitted hereunder.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) pay within three Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, any fee due hereunder or any other amount payable hereunder or under any other Loan Document or deposit any funds as Cash Collateral in respect of L/C Obligations; or

(b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a), 6.05(a) (with respect to the Borrower only), 6.12, or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Sections 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after notice thereof shall have been given to the Borrower by the Administrative Agent or the Required Lenders; or

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

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such payment is not made within any applicable

grace period in respect of any Indebtedness (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, 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) to cause after giving effect to any applicable grace period, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, provided that this clause (i)(B) shall not apply to secured Indebtedness of a Loan Party or a Subsidiary that becomes due upon the sale or transfer by such Loan Party or Subsidiary of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness, or unsecured Indebtedness of a Loan Party or a Subsidiary that does not become due but contains an obligation to offer to purchase such Indebtedness following an asset sale in the event the proceeds of such sale are not reinvested in the business or used to repay a category of Indebtedness that includes the Loans (it being understood that this clause (i)(B) shall apply if such offer to purchase is actually made or required to be made); or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary (other than an Immaterial Subsidiary) thereof 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 or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 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 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect; or

(j) Invalidation of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any Subsidiary of any Loan Party contests in writing the validity or enforceability of any material provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any material provision of any Loan Document, or purports to revoke, terminate or rescind any material provision of any Loan Document; or

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

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Sections 4.01 or 6.12 shall for any reason (other than pursuant to the terms thereof or as a result of a failure by the Collateral Agent to maintain possession of stock certificates and promissory notes actually delivered to it and except to the extent that such loss relates to real property and is covered by a lender's title insurance policy and the related insurer does not dispute coverage) cease to create a valid and perfected first priority Lien (subject to Liens permitted by Section 7.01) on any material portion of the Collateral purported to be covered thereby.

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

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof);
and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer 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.

8.03 Application of Funds. 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, subject to the provisions of Sections 2.15 and 2.16, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including fees, charges and disbursements of counsel to the Administrative Agent 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, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuer 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, L/C Borrowings and amounts owing under Secured Hedge Agreements or any Secured Cash Management Agreement, ratably among the Lenders, the L/C Issuer

and the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.04 and 2.15; and

Last, the balance, if any, after all of the Obligations (other than any Unmatured Surviving Obligations) have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Section 2.03(c) and Section 2.15, 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 thereafter applied as provided in clause "Last" above.

ARTICLE IX

ADMINISTRATIVE AGENT

9.01 Appointment and Authority.

(a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints MSSF 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 Collateral Agent, the Lenders and the L/C Issuer, and solely in the case of Sections 9.06 and 9.10, the Borrower and the other Loan Parties, and the Borrower shall not have rights as a third party beneficiary of any of such provisions other than Sections 9.06 and 9.10.

(b) The Administrative Agent, each of the Lenders (in its capacities as a Lender, Swing Line Lender (if applicable) and potential Hedge Bank and potential Cash Management Bank) and the L/C Issuer hereby irrevocably designate and appoint the Collateral Agent as the agent with respect to the Collateral, and each of the Administrative Agent, each such Lender, and the L/C Issuer irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any of the Administrative Agent, each Lender, or the L/C Issuer, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise

exist against the Collateral Agent. The Collateral Agent shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c)) as if set forth in full herein with respect thereto.

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.

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.

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.

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.

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.

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 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.

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. Upon receipt of any such notice of resignation, the Required Lenders shall have the right 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 and which shall, unless an Event of Default under Section 8.01(a) or 8.01(f) has occurred and is continuing at such time, be reasonably acceptable to the Borrower (which acceptance shall not be unreasonably delayed). 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 (including such acceptance by the Borrower)

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. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 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 an Administrative Agent pursuant to this Section shall also constitute the resignation by such Person as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent, (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.

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.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Lead Arranger, Book-Runner, Documentation Agent and Syndication Agent 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.

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) 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.

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.

9.10 Collateral and Guaranty Matters. The Lenders and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than Unmatured Surviving Obligations) and the expiration or termination of all Letters of Credit (unless Cash Collateralized

in a manner reasonably satisfactory to the L/C Issuer), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.01;

(b) to release any Guarantor from its obligations under the Guaranty and its properties from any Lien under any Loan Document if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder; and

(c) to 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(i).

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, 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 release 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.

9.11 Withholding Taxes. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender (which shall, for purposes of this Section 9.11, include any L/C Issuer) an amount equivalent to any applicable withholding tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall, and does hereby, indemnify the Administrative Agent against, and shall make payable in respect thereof within 30 days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold tax from amounts paid to or for the account of such 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). 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 9.11. The agreements in this Section 9.11 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

ARTICLE X

MISCELLANEOUS

10.01

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

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood that a waiver of any condition precedent in Section 4.01 or 4.02, or the waiver of any Default or Event of Default or any mandatory prepayment, shall not constitute an extension or increase of any Commitment);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (vi) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate, (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder or (iii) to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the highest grid rate upon the occurrence and continuance of any Event of Default;

(d) change (i) Section 8.03 without the written consent of each Lender directly affected thereby, (ii) following an exercise of remedies pursuant to Section 8.02, change Section 2.12(a) or Section 2.13 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly affected thereby or (iii) the order of application of any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of Section 2.05(b), in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (x) if such Facility is the Term Facility, the Required Term Lenders and (y) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

(e) change (i) any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of

Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) of this Section 10.01(e)), without the written consent of each Lender or (ii) the definition of "Required Revolving Lenders" or "Required Term Lenders" without the written consent of each Lender under the applicable Facility;

(f) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(g) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(h) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of (i) if such Facility is the Term Facility, the Required Term Lenders and (ii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

(i) waive any condition set forth in Section 4.01 without the written consent of the Lead Arranger; or

(j) waive any condition set forth in Section 4.02 as to any Credit Extension under the Revolving Credit Facility without the written consent of the Required Revolving Lenders;

and provided further that without limiting any requirement that the same be signed or executed by the Borrower or any other applicable Loan Party, as the case may be, (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) Section 10.06(g) 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; (v) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days after notice thereof; (vi) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto and (vii) any waiver, amendment or modification of any Loan Document that by its terms affects the rights or duties under such Loan Document of the Lenders under a Facility (but not

the Lenders under any other Facility) may be effected by an agreement or agreements in writing entered into solely by the Borrower and if such affected Facility is (i) the Term Facility, the Required Term Lenders and (ii) the Revolving Credit Facility, the Required Revolving Lenders. 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 affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding the foregoing, any amendment or waiver of any representation or warranty set forth in Article V or any existing Default or Event of Default, in each case, in connection with the satisfaction of the conditions set forth in Section 4.02 for any Credit Extension after the Closing Date shall be ineffective with respect to the satisfaction of such conditions without the written consent of the Required Revolving Lenders (it being understood that an amendment or waiver of any representation or warranty for which the condition set forth in Section 4.02(a) is met at the time of such amendment or waiver (without giving effect to such amendment or waiver), or any amendment or waiver of any covenant under which no Default or Event of Default exists at the time of such amendment or waiver (without giving effect to such amendment or waiver), shall not require the separate written consent of the Required Revolving Lenders as a condition to the satisfaction of the conditions set forth in Section 4.02; provided that any waiver for the purpose of waiving a condition to borrowing shall require the consent of the Required Revolving Lenders).

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 (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time 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 Obligations, (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and (iii) to permit any such additional credit facilities which are term facilities to share ratably with the Term Loans in the application of prepayments and to permit any such credit facilities which are revolving credit facilities to share ratably with the Revolving Credit Facility in the application of prepayments; provided that no such consent of the Required Lenders shall be required to make any changes contemplated by Section 2.14. In addition, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the relevant Replacement Term Loans (as defined below) to permit the refinancing of all outstanding Term Loans (the "Refinanced Term Loans") with a replacement term loan or loans hereunder (the "Replacement Term Loans"); provided that (i) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Refinanced Term Loans, (ii) the weighted average Applicable Rate for such Replacement Term Loans shall not be higher than the weighted average Applicable Rate for such Refinanced Term Loans, (iii) the Weighted Average Life to Maturity of such 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 to the extent of nominal amortization for periods where amortization has been eliminated as a result of prepayment of the Refinanced Term Loans) and (iv) 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 final maturity of the Refinanced Term Loans in effect immediately prior to such refinancing.

Notwithstanding anything herein to the contrary, the Borrower and the Administrative Agent may, without the input or consent of any other Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate in the opinion of the Administrative Agent to effect the provisions of Section 2.14 or Section 7.14.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender (or all of the Lenders under any Facility) and that has been approved by the Required Lenders (or the Required Revolving Lenders or the Required Term Lenders, as the case may be), the Borrower may replace such non-consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

10.02 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 (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the 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.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, 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 Borrower, 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).

(d) 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 InformationR 21; 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.

(e) 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.

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 privilege s herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay or reimburse (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Lead Arranger and their respective Affiliates (including the reasonable fees, charges and disbursements of one counsel (together with one local counsel, if necessary, in each relevant jurisdiction for the Lead Arranger and the Administrative Agent)), in connection with the syndication of the Facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers (including proposed amendm ents, modifications or waivers) of the provisions hereof or

thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, any Lender or the L/C Issuer and their respective Affiliates (including, without limitation, the reasonable fees and disbursements of one counsel (together with one local counsel, if necessary, in each relevant jurisdiction and another counsel if an actual conflict of interest exists among the Administrative Agent, the Collateral Agent, the L/C Issuer, the Lenders and their respective Affiliates) for the Administrative Agent, the Collateral Agent, the Lenders, the L/C Issuer and their respective Affiliates taken together), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), the Lead Arranger, the Collateral Agent, each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable and documented out-of-pocket costs and expenses (including, without limitation, the reasonable fees and disbursements of one counsel (together with one local counsel, if necessary, in each relevant jurisdiction) for all Indemnitees taken as a whole; provided that if there is a conflict of interest, the Borrower shall so indemnify for expenses of one additional counsel to the affected Indemnitees taken as a whole), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the 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), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any of the Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee (and, upon any such determination pursuant to this clause (x), any indemnification

payments with respect to such losses, claims, damages, liabilities or related expenses previously received by such Indemnitee shall be subject to reimbursement by such Indemnitee), (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for material breach of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) result from claims of any of the Lenders solely against one or more Lenders (and not by one or more Lenders against the Administrative Agent, the Collateral Agent, the Lead Arranger or the L/C Issuer in such capacity) that have not resulted from the action, inaction, participation or contribution of the Borrower or its Subsidiaries or any of their respective officers, directors, stockholders, partners, members, employees, agents, representatives or advisors.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), 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 Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or 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 subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

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

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 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.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f), or (iv) to an SPC in accordance with the provisions of Section 10.06(g) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b)), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that except in the case of an assignment to a Lender, an Affiliate of the assigning Lender or an Approved Fund or the Borrower in connection with acquisitions or repurchases of Term Loans or Additional Term Loans by the Borrower pursuant to Discounted Prepayment Offers under Section 2.17, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts. (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans

at the time owing to it under such Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Credit Facility, or \$1,000,000, in the case of any assignment in respect of the Term Facility, unless (x) such assignment is in connection with the primary syndication of the Facilities or (y) each of the Administrative Agent and, so long as no Event of Default under Section 8.01(a), Section 8.01(f) (with respect to the Borrower) or Section 8.01(g)(i) (with respect to the Borrower) has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not (A) apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default under Section 8.01(a), Section 8.01(f) (with respect to the Borrower) or Section 8.01(g)(i) (with respect to the Borrower) has occurred and is continuing at the time of such assignment, (2) such assignment is to a Lender, an Affiliate of a Lender, an Approved Fund, MSSF or an Affiliate of MSSF (other than the Borrower or any of its Subsidiaries) or (3) such assignment is in connection with the primary syndication of the Facilities; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 5 Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Term Commitment or Revolving Credit Commitment if such assignment

is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender, an Approved Fund with respect to such Lender, MSSF or an Affiliate of MSSF (other than the Borrower or any of its Subsidiaries) or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender, an Approved Fund, MSSF or an Affiliate of MSSF (other than the Borrower or any of its Subsidiaries);

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility;

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire;

(v) No Assignment to Borrower. No such assignment shall be made to the Borrower or any of its Subsidiaries, or any of the Borrower's Affiliates (other than MSSF and its Affiliates, excluding the Borrower and its Subsidiaries); and

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

In connection with any waiver, consent or other action requiring Required Lender, Required Revolving Lender or Required Term Lender consent, notwithstanding anything in this Agreement to the contrary, (x) unless a Default shall have occurred and is continuing, none of the Borrower's Affiliates shall be permitted to consent (or withhold its consent) with respect to the Loans and Commitments held by such Affiliates that are, in the aggregate, in excess of 10% of the aggregate outstanding amount of any Class of Loans and Commitments or all Loans and Commitments, as the case may be, as of the date of such waiver, consent or action, and for purposes of calculating Required Lender, Required Revolving Lender or Required Term Lender consent, as the case may be, an amount equal to the aggregate amount of any Loans or Commitments held by such Affiliates that is in excess of such 10% shall be deducted from the aggregate amount of Loans and Commitments outstanding entitled to vote with respect to such Class of Loans and Commitments or all Loans and Commitments, as the case may be, and (y) if a Default shall have occurred and is continuing, none of the Borrower's Affiliates shall be permitted to consent (or withhold its consent) with respect to its Loans and Commitments, and for purposes of calculating Required Lender, Required Revolving Lender or Required Term Lender consent, as the case may be, an amount equal to the aggregate amount of all Loans or Commitments held by such Affiliates shall be deducted from the aggregate amount of Loans and Commitments outstanding entitled to vote with respect to such Class of Loans and Commitments or all Loans and Commitments, as the case may be.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection 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 10.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations 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 Administrative Agent 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. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

Upon its receipt of a duly completed Assignment and Assumption executed by the assigning Lender and an assignee, together with any Note or Notes subject to such assignment, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), any applicable tax forms and any written consent to such assignment required by paragraph (b) of this Section 10.06, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender, or the Borrower or any of its Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C 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 Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this

Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirement to provide any applicable forms under Section 3.01) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation with respect to a Commitment or Loan to the Borrower shall, acting solely for this purpose as a non-fiduciary 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 Commitment and/or Loan (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.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Sections 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, unless the sale of the participation to such Participant is made with the Borrower's prior written consent (such consent not to be unreasonably withheld or delayed).

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

(g) Special Purpose Funding Vehicles. 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) an SPC shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirement to provide any applicable forms under Section 3.01) but only to the same extent as the applicable Granting Lender, (ii) nothing herein shall constitute a commitment by any SPC to fund any Loan, and (iii) 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 or, if it fails to do so, to make such payment to the Administrative Agent as is required under Section

2.12(b)(ii). Each party hereto hereby agrees that (i) 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 (including its obligations under Section 3.04) unless such grant was made with prior written consent of the Borrower (such consent not to be unreasonably withheld or delayed), (iii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable (all liability for which shall remain with the Granting Lender), and (iv) 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. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. 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, 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.

(h) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time MSSF assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to Section 10.06(b), MSSF may, (i) upon 30 days' notice to the Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to the Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of MSSF as L/C Issuer or Swing Line Lender, as the case may be. If MSSF resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as 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 MSSF 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 or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) 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.

Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) on a confidential and need-to-know basis to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives who need to know such information in connection with the transactions contemplated hereby (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will be subject to customary confidentiality obligations of professional practice or will agree (which agreement may be oral or pursuant to company policy) to be bound by the terms of this Section 10.07 (or language substantially similar to this Section 10.07), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners) (in which case such Person, to the extent permitted by law and except where such disclosure is made in the course of routine audits or reviews by regulatory or self-regulatory authorities, shall inform the Borrower promptly) or to any Federal Reserve Bank or central bank in connection with a pledge or assignment pursuant to Section 10.06(f), (c) to the extent required pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or by applicable laws (including for purposes of establishing a "due diligence" defense) or regulations or by any subpoena or similar legal process (in which case such Person, to the extent permitted by law, shall inform the Borrower promptly), (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 10.07, to (i) any permitted assignee of or Participant in, or any prospective permitted assignee of or Participant in, any of its rights or obligations under this Agreement or any Additional Lender or any potential Additional Lender or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section, (ii) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a basis that to its knowledge is nonconfidential from a source other than the Borrower or (iii) is independently developed by such Person.

For purposes of this Section, "Information" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a basis that to its knowledge is nonconfidential prior to disclosure by any Loan Party or any Subsidiary thereof, provided that, in the case of information received from a Loan Party or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential or is delivered pursuant to Sections 6.01, 6.02 or 6.03 hereof. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

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

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower owing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmaturred or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such 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 2.16 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 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. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have.[] 60; Each Lender and the L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 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 the Administrative 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 the Administrative 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.

10.10 Counterparts; Integration; Effectiveness.

(a) This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counter parts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or PDF (or similar file) by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

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

10.11 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.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, 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.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04 or delivers a notice described in Section 3.02, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender is a Defaulting Lender or if any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents (or, in the case of a consent which requires the consent of all Lenders under a particular Facility, all of its interests, rights and obligations under such Facility) to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) (or, in the case of a consent which requires the consent of all Lenders under a particular Facility, such amounts solely with respect to such Facility);

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

(c) such assignment does not conflict with applicable Laws.

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

Any Lender being replaced pursuant to this Section 10.13 shall promptly (i) execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans, and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent.

10.14 Governing Law; Jurisdiction; Etc.

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

(b) SUBMISSION TO JURISDICTION. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT SITTING IN NEW YORK COUNTY, AND ANY APPELLATE COURT FROM ANY

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

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

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

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

10.16 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), the Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lead Arranger are arm's-length commercial transactions between the Borrower and its Subsidiaries, on the one hand, and the Administrative Agent and the Lead Arranger, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower 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) each of the Administrative Agent and the Lead Arranger 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 the Borrower or any of its Subsidiaries, or any other Person and (B) none of the Administrative Agent and the Lead Arranger has any obligation to the Borrower or any of its Subsidiaries 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 and the Lead Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Subsidiaries, and none of the Administrative Agent and the Lead Arranger has any obligation to disclose any of such interests to the Borrower or any of its Subsidiaries. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and the Lead Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "USA Patriot Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA Patriot Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

MORGAN STANLEY SENIOR FUNDING, INC., as
Administrative Agent, L/C Issuer, Swing Line Lender and a
Lender

By: /s/ Wissam B. Kairouz

Name: Wissam B. Kairouz

Title: Authorized Signatory

MORGAN STANLEY & CO. INCORPORATED, as
Collateral Agent

By: /s/ Wissam B. Kairouz

Name: Wissam B. Kairouz

Title: Authorized Signatory

MORGAN STANLEY BANK, N.A.,
as a Lender

By: /s/ Wissam B. Kairouz

Name: Wissam B. Kairouz

Title: Authorized Signatory

Credit Suisse AG, Cayman Islands Bank,
as a Lender

By: /s/ Doreen Barr

Name: Doreen Barr

Title: Director

By: /s/ Lynne-Marie Paquette

Name: Lynne-Marie Paquette

Title: Associate

BANK OF AMERICA, N.A.
as a Lender

By: /s/ Maryanne Fitzmaurice

Name: Maryanne Fitzmaurice

Title: Senior Vice President

RAYMOND JAMES BANK, FSB
as a Lender

By: /s/ Kathy Bennett

Name: Kathy Bennett

Title: VP

Union Bank, N.A.
as a Lender

By: /s/ Megan R. Webster

Name: Megan R. Webster

Title: Vice President

Bank of the West
as a Lender

By: /s/ Sidney Jordan

Name: Sidney Jordan

Title: Vice President

E.Sun Commercial Bank, Ltd., Los Angeles Branch,
as a Lender

By: /s/ Benjamin Lin

Name: Benjamin Lin

Title: EVP & General Manager

MSCI Credit Agreement



www.msccbarra.com

MSCI Completes Acquisition of RiskMetrics

NEW YORK – June 1, 2010 – MSCI Inc. (NYSE: MXB), a leading global provider of investment decision support tools, including indices and portfolio risk and performance analytics, today announced that it has completed its acquisition of RiskMetrics Group, Inc. Under the terms of the transaction, each outstanding share of RiskMetrics common stock not held by MSCI, RiskMetrics or any of their subsidiaries has been converted into the right to receive a combination of 0.1802 of a share of MSCI's Class A common stock and \$16.35 in cash, without interest.

"Today, we take another significant step forward in our ambition to become the leading provider of mission-critical investment decision support tools to investors globally," said Henry Fernandez, Chairman and CEO of MSCI. "The addition of RiskMetrics greatly expands our capabilities in the high growth, high margin business of multi-asset class risk management analytics. Recent events continue to demonstrate the importance of managing risk in today's financial markets and our clients will benefit from our company's expanded product range and enhanced risk management offerings."

"MSCI now has annualized revenues of more than \$750 million and more than 2,000 employees worldwide. Our increased scale and scope will enable us to invest more in developing new products and capabilities for our clients which should, in turn, lead to additional growth for our shareholders," added Mr. Fernandez.

In conjunction with the acquisition of RiskMetrics Group, Inc., MSCI also announced that it has raised \$1.375 billion of debt financing, including a \$1.275 billion term loan and a \$100 million undrawn revolving credit facility. The additional capital was used to fund the acquisition of RiskMetrics as well as to repay all prior outstanding terms loans of both MSCI and RiskMetrics.

For RiskMetrics Shareholders

MSCI has appointed Mellon Shareowner Services as exchange agent in connection with the merger. RiskMetrics registered stockholders with questions regarding the exchange of their RiskMetrics common stock for the merger consideration should contact Mellon Shareowner Services at 1-800-777-3674 (toll free) or 1-201-680-6579 (outside of the U.S.). Additional information will also be mailed to RiskMetrics registered stockholders. RiskMetrics stockholders who hold stock through a broker or bank should receive information regarding the exchange or conversion of their shares from the party holding their shares.

About MSCI Inc.

MSCI Inc. is a leading provider of investment decision support tools to investors globally, including asset managers, banks, hedge funds and pension funds. MSCI Inc. products and services include indices, portfolio risk and performance analytics, and governance tools.

The company's flagship product offerings are: the MSCI indices which include over 120,000 daily indices covering more than 70 countries; Barra portfolio risk and performance analytics covering global equity and fixed income markets; RiskMetrics market and credit risk analytics; ISS out-sourced proxy research, voting and vote reporting services; CFRA forensic accounting risk research, legal/regulatory risk assessment, and due-diligence; and FEA valuation models and risk management software for the energy and commodities markets. MSCI Inc. is headquartered in New York, with research and commercial offices around the world. MXB#IR

For further information on MSCI Inc. or our products please visit www.msci.com.

MSCI Inc. contact:

Edings Thibault, MSCI, New York

+1.866.447.7874

For media enquiries please contact:

Sally Todd | Clare Milton, Penrose Financial, London
Steven Bruce | Patrick Clifford, Abernathy MacGregor, New York

+44.20.7786.4888
+1.212.371.5999

Forward-Looking Statements

This release contains forward-looking statements. These statements relate to future events or to future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance, or achievements to be materially different from any future results, levels of activity, performance, or achievements expressed or implied by these forward-looking statements. In some cases, you can identify forward-looking statements by the use of words such as “may,” “could,” “expect,” “intend,” “plan,” “seek,” “anticipate,” “believe,” “estimate,” “predict,” “potential,” or “continue” or the negative of these terms or other comparable terminology. You should not place undue reliance on forward-looking statements because they involve known and unknown risks, uncertainties and other factors that are, in some cases, beyond our control and that could materially affect actual results, levels of activity, performance, or achievements.

Other factors that could materially affect actual results, levels of activity, performance or achievements can be found in MSCI's Annual Report on form 10-K for the fiscal year ended November 30, 2009 and filed with the Securities and Exchange Commission on January 29, 2010, the Registration Statement on Form S-4 filed with the Securities and Exchange Commission on April 2, 2010 and in quarterly reports on form 10-Q and current reports on form 8-K. If any of these risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may vary significantly from what we projected. Any forward-looking statement in this release reflects our current views with respect to future events and is subject to these and other risks, uncertainties and assumptions relating to our operations, results of operations, growth strategy and liquidity. We assume no obligation to publicly update or revise these forward-looking statements for any reason, whether as a result of new information, future events, or otherwise.

MSCI INC. AND RISKMETRICS GROUP, INC.
UNAUDITED PRO FORMA CONDENSED COMBINED
FINANCIAL STATEMENTS

On June 1, 2010, MSCI Inc. (“MSCI”) acquired RiskMetrics Group, Inc. (“RiskMetrics”). Under the terms of the Agreement and Plan of Merger dated as of February 28, 2010 (the “Merger Agreement”) by and among MSCI, Crossway Inc. (“Merger Sub”), a wholly owned subsidiary of MSCI, and RiskMetrics, Merger Sub merged with and into RiskMetrics (the “Merger”), with RiskMetrics continuing as the surviving corporation and a wholly owned subsidiary of MSCI. MSCI and RiskMetrics began joint operations immediately after the Merger became effective. The unaudited pro forma condensed combined statements of income and the unaudited pro forma condensed combined statement of financial condition are based upon the historical consolidated financial statements of MSCI and RiskMetrics after giving effect to the Merger, and after applying the assumptions, reclassifications and adjustments described in the accompanying notes to the unaudited pro forma condensed combined financial statements.

MSCI and RiskMetrics have different fiscal year ends. For ease of reference, all pro forma statements use MSCI’s period end date and no adjustments were made to RiskMetrics’ reported information for its different period end dates. Accordingly, the unaudited pro forma condensed combined statement of income for the year ended November 30, 2009 combines MSCI’s audited consolidated statement of income for the fiscal year ended November 30, 2009 with RiskMetrics’ consolidated statement of operations for the fiscal year ended December 31, 2009, and is presented as if the Merger had occurred on December 1, 2008, the first day of MSCI’s fiscal year ended November 30, 2009. The unaudited pro forma condensed combined statement of income for the three months ended February 28, 2010 combines MSCI’s unaudited condensed consolidated statement of income for the three months ended February 28, 2010 with RiskMetrics’ unaudited quarterly financial data for the three months ended March 31, 2010, and is presented as if the Merger had occurred on December 1, 2008, the first day of MSCI’s fiscal year ended November 30, 2009. The unaudited pro forma condensed combined statement of financial condition as of February 28, 2010, combines MSCI’s February 28, 2010 unaudited condensed consolidated statement of financial condition with RiskMetrics’ March 31, 2010 unaudited consolidated balance sheet, and is presented as if the Merger had occurred on February 28, 2010.

The historical consolidated financial information has been adjusted in the unaudited pro forma condensed financial statements to give effect to pro forma events that are (1) directly attributable to the Merger, (2) factually supportable, and (3) with respect to the statement of income, expected to have a continuing impact on the combined results. The unaudited pro forma condensed combined financial statements should be read in conjunction with the accompanying notes to the unaudited pro forma condensed combined financial statements. In addition, the unaudited pro forma condensed combined financial statements were based on and should be read in conjunction with the:

- separate historical financial statements of MSCI as of and for the year ended November 30, 2009 and the related notes included in MSCI’s Annual Report on Form 10-K for the year ended November 30, 2009;
- separate historical financial statements of RiskMetrics as of and for the year ended December 31, 2009 and the related notes included in RiskMetrics’ Annual Report on Form 10-K for the year ended December 31, 2009;
- separate historical financial statements of MSCI as of and for the three months ended February 28, 2010 and the related notes included in MSCI’s Quarterly Report on Form 10-Q for the three months ended February 28, 2010; and
- separate historical financial statements of RiskMetrics as of and for the three months ended March 31, 2010 and the related notes included in RiskMetrics’ Quarterly Report on Form 10-Q for the three months ended March 31, 2010.

The unaudited pro forma condensed combined financial information has been presented for informational purposes only. The pro forma information is not necessarily indicative of what the combined company’s financial position or results of operations actually would have been had the Merger been completed as of the dates indicated. In addition, the unaudited pro forma condensed combined financial information does not purport to project the future financial position or operating results of the combined company. There were no material transactions between MSCI and RiskMetrics during the periods presented in the unaudited pro forma condensed combined financial statements that would need to be eliminated.

The unaudited pro forma condensed combined financial information has been prepared using the acquisition method of accounting under existing U.S. generally accepted accounting principles (“GAAP”), which are subject to change and interpretation. MSCI has been treated as the acquirer in the Merger for accounting purposes. The acquisition accounting is dependent upon certain valuations and other studies that have yet to progress to a stage

where there is sufficient information for a definitive measurement. Accordingly, the pro forma adjustments included herein are preliminary and have been made solely for the purpose of providing unaudited pro forma condensed combined financial information and may be revised as additional information becomes available and as additional analyses are performed. Differences between these preliminary estimates reflected in these unaudited condensed combined financial statements and the final acquisition accounting will likely occur and these differences could have a material impact on the accompanying unaudited pro forma condensed combined financial statements and the combined company's future results of operations and financial position.

The unaudited pro forma condensed combined financial information does not reflect any cost savings, operating synergies or revenue enhancements that the combined company may achieve as a result of the Merger or the costs to integrate the operations of MSCI and RiskMetrics or the costs necessary to achieve these cost savings, operating synergies and revenue enhancements.

**Unaudited Pro Forma Condensed Combined
Statement of Income
For the Year Ended November 30, 2009
(in thousands, except per share data)**

	<u>MSCI</u>	<u>RiskMetrics</u>	<u>Pro Forma Adjustments</u>	<u>Pro Forma Combined</u>
	(unaudited)			
Operating revenues	\$ 442,948	\$ 303,361	\$ —	\$ 746,309
Cost of services	118,665	134,782	—	253,447
Selling, general and administrative	135,780	71,155	—	206,935
Amortization of intangible assets	25,554	23,441	26,550 (b)	75,545
Depreciation and amortization of property, equipment and leasehold improvements	11,957	8,349	—	20,306
Total operating expenses	<u>291,956</u>	<u>237,727</u>	<u>26,550</u>	<u>556,233</u>
Operating income	<u>150,992</u>	<u>65,634</u>	<u>(26,550)</u>	<u>190,076</u>
Interest income	(1,053)	(570)	1,576 (c)	(47)
Interest expense	19,683	20,825	25,877 (d)	66,385
Other expense (income)	641	(1,307)	—	(666)
Other expense (income), net	<u>19,271</u>	<u>18,948</u>	<u>27,453</u>	<u>65,672</u>
Income before provision for income taxes	131,721	46,686	(54,003)	124,404
Provision for income taxes	49,920	15,560	(20,608) (e)	44,872
Net income	<u>\$ 81,801</u>	<u>\$ 31,126</u>	<u>\$ (33,395)</u>	<u>\$ 79,532</u>
Earnings per basic common share	<u>\$ 0.81</u>	<u>\$ 0.50</u>		<u>\$ 0.70</u>
Earnings per diluted common share	<u>\$ 0.80</u>	<u>\$ 0.46</u>		<u>\$ 0.67</u>
Weighted average shares outstanding used in computing earnings per share				
Basic	<u>100,607</u>	<u>62,021</u>	<u>(49,383)</u>	<u>113,245</u>
Diluted	<u>102,475</u>	<u>67,943</u>	<u>(51,005)</u>	<u>119,413</u>

See the accompanying notes to the unaudited pro forma condensed combined financial statements, which are an integral part of these statements. The pro forma adjustments are explained in *Note 6. Pro Forma Adjustments*.

**Unaudited Pro Forma Condensed Combined
Statement of Income
For the Three Months Ended February 28, 2010
(in thousands, except per share data)**

	<u>MSCI</u>	<u>RiskMetrics</u>	<u>Pro Forma Adjustments</u>	<u>Pro Forma Combined</u>
	(unaudited)			
Operating revenues	\$ 121,680	\$ 77,046	\$ —	\$ 198,726
Cost of services	29,291	38,670	—	67,961
Selling, general and administrative	37,461	16,499	(4,076) (a)	49,884
Amortization of intangible assets	4,278	5,910	6,588 (b)	16,776
Depreciation and amortization of property, equipment and leasehold improvements	3,393	2,151	—	5,544
Total operating expenses	<u>74,423</u>	<u>63,230</u>	<u>2,512</u>	<u>140,165</u>
Operating income	<u>47,257</u>	<u>13,816</u>	<u>(2,512)</u>	<u>58,561</u>
Interest income	(408)	(114)	516 (c)	(6)
Interest expense	4,436	4,993	7,168 (d)	16,597
Other expense (income)	(608)	774	—	166
Other expense (income), net	<u>3,420</u>	<u>5,653</u>	<u>7,684</u>	<u>16,757</u>
Income before provision for income taxes	43,837	8,163	(10,196)	41,804
Provision for income taxes	16,319	2,904	(5,162) (e)	14,061
Net income	<u>\$ 27,518</u>	<u>\$ 5,259</u>	<u>\$ (5,034)</u>	<u>\$ 27,743</u>
Earnings per basic common share	<u>\$ 0.26</u>	<u>\$ 0.08</u>		<u>\$ 0.24</u>
Earnings per diluted common share	<u>\$ 0.26</u>	<u>\$ 0.08</u>		<u>\$ 0.23</u>
Weighted average shares outstanding used in computing earnings per share				
Basic	<u>105,235</u>	<u>64,131</u>	<u>(51,493)</u>	<u>117,873</u>
Diluted	<u>105,844</u>	<u>69,421</u>	<u>(52,943)</u>	<u>122,322</u>

See the accompanying notes to the unaudited pro forma condensed combined financial statements, which are an integral part of these statements. The pro forma adjustments are explained in *Note 6. Pro Forma Adjustments*.

**Unaudited Pro Forma Condensed Combined
Statement of Financial Condition
As of February 28, 2010
(in thousands)**

	<u>MSCI</u>	<u>RiskMetrics</u>	<u>Pro Forma Adjustments</u>		<u>Pro Forma Combined</u>
ASSETS					
Cash and cash equivalents	\$ 84,349	\$ 242,650	\$ (245,996)	(g)	\$ 81,003
Short-term investments	358,145	—	(358,145)	(g)	—
Accounts receivable, net of allowance for doubtful accounts	113,901	34,343	—		148,244
Deferred tax assets	23,877	834	(1,638)	(f)	23,073
Prepaid and other assets	21,576	33,358	4,390	(h)(k)	59,324
Total current assets	601,848	311,185	(601,389)		311,644
Property, plant and equipment, net of accumulated depreciation	27,256	13,471	—		40,727
Goodwill	441,623	325,605	972,809	(i)	1,740,037
Intangible assets, net of accumulated amortization	115,911	129,499	504,228	(j)	749,638
Other non-current assets	9,236	5,769	18,093	(h)(k)	33,098
Total assets	<u>\$ 1,195,874</u>	<u>\$ 785,529</u>	<u>\$ 893,741</u>		<u>\$ 2,875,144</u>
LIABILITIES AND STOCKHOLDERS' EQUITY					
Accounts payable	\$ 406	\$ 3,856	\$ —		\$ 4,262
Accrued compensation and related benefits	21,517	15,085	—		36,602
Other accrued liabilities	30,088	8,312	(4,191)	(l)	34,209
Current maturities of long-term debt	42,088	2,966	(33,367)	(g)(h)(m)	11,688
Deferred revenue	168,311	114,464	—		282,775
Total current liabilities	262,410	144,683	(37,558)		369,536
Long-term debt, net of current maturities	327,099	284,688	645,151	(g)(h)(m)	1,256,938
Deferred taxes	38,443	29,869	208,827	(f)	277,139
Other non-current liabilities	22,261	18,105	(13,786)	(n)	26,580
Total liabilities	<u>650,213</u>	<u>477,345</u>	<u>802,634</u>		<u>1,930,192</u>
Preferred stock					
Preferred stock	—	—	—		—
Common stock	1,057	671	(545)	(o)	1,183
Treasury stock	(21,614)	(579)	579	(p)	(21,614)
Additional paid-in capital	461,035	493,772	(68,174)	(q)	886,633
Retained earnings (accumulated deficit)	111,531	(175,012)	146,026	(g)(h)(r)	82,545
Accumulated other comprehensive income/(expense)	(6,348)	(10,668)	13,221	(s)	(3,795)
Total stockholders' equity	<u>545,661</u>	<u>308,184</u>	<u>92,634</u>		<u>946,479</u>
Total liabilities and stockholders' equity	<u>\$ 1,195,874</u>	<u>\$ 785,529</u>	<u>\$ 893,741</u>		<u>\$ 2,875,144</u>

See the accompanying notes to the unaudited pro forma condensed combined financial statements, which are an integral part of these statements. The pro forma adjustments are explained in *Note 6. Pro Forma Adjustments*.

NOTES TO THE UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS

1. Description of Transaction

On June 1, 2010, MSCI acquired RiskMetrics pursuant to the Merger Agreement for consideration of approximately \$1,572.4 million, which includes MSCI class A common stock valued at approximately \$371.8 million, MSCI stock options and restricted stock awards valued at \$53.9 million and cash of approximately \$1,146.7 million.

With certain limited exceptions, each share of RiskMetrics common stock issued and outstanding immediately prior to the consummation of the Merger was converted into the right to receive a combination of \$16.35 in cash, without interest, and 0.1802 of a share of MSCI class A common stock (collectively, the "Merger Consideration") in a taxable transaction.

In connection with the Merger, each RiskMetrics option outstanding as of the effective time of the Merger was converted into an adjusted option to acquire shares of MSCI class A common stock, on the same terms and conditions as were applicable under the RiskMetrics option immediately prior to the completion of the Merger. The number of shares of MSCI class A common stock subject to the adjusted option was equal to the product of (i) the number of shares of RiskMetrics common stock subject to the RiskMetrics option immediately prior to the completion of the Merger multiplied by (ii) 0.726, rounded down to the nearest whole share. The exercise price per share of MSCI class A common stock subject to an adjusted option was an amount (rounded up to the nearest whole cent) equal to the quotient of (A) the exercise price per share of RiskMetrics common stock subject to the RiskMetrics option immediately prior to the completion of the Merger divided by (B) 0.726. Also, at the completion of the Merger, each restricted stock award (which represents a share of RiskMetrics common stock subject to vesting and forfeiture restrictions) outstanding as of the effective time of the Merger, was converted into a restricted stock award relating to a number of shares of MSCI class A common stock equal to the product of (i) the number of shares of RiskMetrics common stock subject to the RiskMetrics restricted stock award immediately prior to the completion of the Merger multiplied by (ii) 0.726, rounded to the nearest whole share (with 0.50 being rounded upward). Each converted restricted stock award remains subject to the same vesting and forfeiture terms as were applicable to the RiskMetrics restricted stock award immediately prior to the completion of the Merger.

2. Basis of Presentation

The unaudited pro forma condensed combined financial information was prepared using the acquisition method of accounting and was based on the historical consolidated financial statements of MSCI and RiskMetrics. Certain reclassifications have been made to the historical consolidated financial statements of RiskMetrics to conform with MSCI's presentation, primarily related to the presentation of research and development, selling and marketing, general and administrative, loss on disposal of property and equipment, other expenses, income taxes receivable, other receivables and prepaid expenses, deferred financing costs, accrued expenses, other current liabilities and deferred revenue. All pro forma statements use MSCI's period end date and no adjustments were made to RiskMetrics' reported information for its different period end dates.

The acquisition method of accounting is based on the Financial Accounting Standards Board's Accounting Standards Codification ("ASC") Subtopic 805-10, *Business Combinations*, and uses the fair value concepts defined in ASC Subtopic 820-10, *Fair Value Measurements and Disclosures*, which MSCI has adopted as required. The unaudited pro forma condensed combined financial information was prepared using the acquisition method of accounting under GAAP, which is subject to change and interpretation. ASC Subtopic 805-10 requires, among other things, that most assets acquired and liabilities assumed be recognized at their fair values as of the acquisition date. In addition, ASC Subtopic 805-10 establishes that the consideration transferred be measured at the closing date of the Merger at the then-current market price.

ASC Subtopic 820-10 defines the term "fair value" and sets forth the valuation requirements for any asset or liability measured at fair value, expands related disclosure requirements and specifies a hierarchy of valuation techniques based on the nature of the inputs used to develop the fair value measures. Fair value is defined in ASC Subtopic 820-10 as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." This is an exit price concept for the valuation of the asset or liability. In addition, market participants are assumed to be buyers and sellers in the principal (or the most advantageous) market for the asset or liability. Fair value measurements for an asset assume the highest and best use by these market participants. As a result of these standards, MSCI may be required to record assets which are not intended to be used or sold and/or to value assets at fair value measures that do not reflect MSCI's intended use of those assets. Many of these fair value measurements can be highly subjective and it is also possible that other professionals, applying reasonable judgment to the same facts and circumstances, could develop and support a range of alternative estimated amounts.

Under the acquisition method of accounting, the assets acquired and liabilities assumed will be recorded as of the completion of the Merger, at their respective fair values and added to those of MSCI. Financial statements and reported results of operations of MSCI issued after completion of the Merger will reflect these values, but will not be retroactively restated to reflect the historical financial position or results of operations of RiskMetrics.

Under ASC Subtopic 805-10, acquisition-related transaction costs (*i.e.*, advisory, legal, valuation, and other professional fees) and certain acquisition-related restructuring charges impacting the target company are not included as a component of consideration transferred but are accounted for as expenses in the periods in which the costs are incurred. Total acquisition-related transaction costs expected to be incurred by MSCI are estimated to be approximately \$20.7 million, \$2.2 million of which MSCI estimates had been incurred in the three months ended February 28, 2010, and are reflected in these unaudited pro forma condensed combined financial statements as a reduction to cash and retained earnings. The unaudited pro forma condensed combined financial statements do not reflect any acquisition-related restructuring charges incurred in connection with the Merger but these costs will be expensed as incurred. The unaudited pro forma condensed combined financial statements do not reflect anticipated acquisition-related transaction costs to be incurred by RiskMetrics, which are estimated to be approximately \$12.8 million, \$1.8 million of which RiskMetrics estimates to have been incurred during the first three months of 2010.

3. Accounting Policies

As a result of the continuing review of RiskMetrics' accounting policies, MSCI may identify differences between the accounting policies of the two companies that, when conformed, could have a material impact on the combined financial statements. At this time, MSCI is not aware of any differences that would have a material impact on the combined financial statements. The unaudited pro forma condensed combined financial statements do not assume any differences in accounting policies.

4. Consideration Transferred

In accordance with existing GAAP standards, the fair value of MSCI's class A common stock issued as part of the consideration transferred was measured on the closing date of the Merger at the then-current market price multiplied by the exchange ratio. Within a few days following the effective time of the Merger, a final determination of the number of shares of RiskMetrics' common stock issued and outstanding and other equity interests entitled to receive consideration is expected to be completed, and, at that time, additional shares of MSCI class A common stock or cash may be issued to RiskMetrics' stockholders. The following provides a reasonable indication of consideration transferred to effect the acquisition of RiskMetrics:

	<u>Conversion Calculation</u>	<u>Estimated Fair Value</u>	<u>Form of Consideration</u>
	(in thousands, except exchange ratio and per share amounts)		
Number of shares of RiskMetrics common stock outstanding (excluding unvested RiskMetrics restricted stock awards) as of the effective time of the Merger	70,135		
Multiplied by the product of MSCI's closing stock price on June 1, 2010 and 0.1802 (\$29.42*0.1802)	<u>\$ 5.30</u>	\$ 371,820	MSCI class A common stock
Merger Consideration for unvested MSCI restricted stock awards and vested and unvested MSCI stock options exchanged for outstanding unvested RiskMetrics restricted stock awards and vested and unvested RiskMetrics stock options		\$ 55,431	MSCI restricted stock awards and MSCI stock options
Number of shares of RiskMetrics common stock outstanding (excluding unvested RiskMetrics restricted stock awards) as of the effective time of the Merger	70,135		
Multiplied by the cash portion of Merger Consideration per common share outstanding	<u>\$ 16.35</u>	<u>\$ 1,146,707</u>	Cash
Consideration transferred		<u><u>\$ 1,573,958</u></u>	

5. Estimate of Assets to be Acquired and Liabilities to be Assumed

The following is an estimate of the assets to be acquired and the liabilities to be assumed by MSCI in the Merger as if it had occurred on February 28, 2010, reconciled to the consideration transferred. The final valuation of net assets acquired, using acquisition date assets and liabilities, is expected to be completed as soon as possible after the closing date of the Merger.

	(in thousands)
Book value of net assets acquired at February 28, 2010	\$ 308,184
Adjusted for:	
Elimination of existing goodwill and intangible assets	(455,104)
Elimination of existing deferred taxes on goodwill, intangible assets and interest rate swap	38,898
Elimination of existing deferred financing fees	(3,928)
Adjusted book value of net assets acquired	\$ (111,950)
Adjustments to:	
Identifiable intangible assets(a)	633,727
Debt(b)	—
Non-contractual contingencies(c)	(35)
Taxes(d)	(247,725)
Goodwill(e)	1,298,414
Estimate of consideration expected to be transferred	\$ 1,572,431

- (a) As of the completion of the Merger, identifiable intangible assets are required to be measured at fair value consistent with ASC Subtopic 820-10. The fair value measurements were performed after considering the highest and best use of the acquired intangible assets by market participants.

The fair value of the identifiable intangible assets was determined using either the income or cost approach. The income approach, which relies on future estimates of cash flows, was used to estimate the fair value of acquired customer relationships, technology, proprietary processes, trade names and non-compete agreements. Prior to the consummation of the Merger, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and other relevant laws and regulations, imposed significant limitations regarding what MSCI could learn about the specifics of the RiskMetrics intangible assets.

At this time, MSCI is just beginning to collect complete information as to the amount, timing and risk of cash flows of all of these intangible assets, particularly those assets still in the research and development phase, and, as a result, this process will take several months to complete. Some of the more significant assumptions inherent in the development of intangible asset values, from the perspective of a market participant, include: the amount and timing of projected future cash flows (including revenue, cost of sales, research and development costs, sales and marketing expenses, and working capital/contributory asset charges); the discount rate selected to measure the risks inherent in the future cash flows; and the assessment of the asset's life cycle and the competitive trends impacting the asset, as well as other factors. However, MSCI believes that the information gathered during the due diligence process prior to entering into the Merger Agreement and from RiskMetrics' public disclosures were adequate to perform preliminary fair value measurements of the primary intangible assets. For purposes of these unaudited pro forma condensed combined financial statements and using publicly available information, such as historical product revenues, RiskMetrics' cost structure, and certain other high-level assumptions, the fair value of the identifiable intangible assets and their weighted-average useful lives provide a reasonable indication of the adjustment that is likely to occur.

	<u>Estimated Fair Value</u>	<u>Estimated Useful Life</u>
	(in thousands)	
Customer relationships—finite-lived	\$ 429,600	13 to 15 years
Developed technology—finite-lived	55,900	4 to 7 years
Proprietary processes—finite-lived	5,400	6 years
Trade names—finite-lived	137,100	10 to 20 years
Internally developed software—finite-lived	787	3 years
Non-competes—finite-lived	4,940	2 years
Total	<u>\$ 633,727</u>	

Definite lived intangible assets will be amortized over their estimated useful lives. Intangible assets with indefinite useful lives and goodwill will not be amortized but will be tested for impairment at least annually. All intangible assets and goodwill are also tested for impairment when certain indicators are present. In the future, if it were determined that intangible assets or goodwill are impaired, an impairment charge would be recorded at that time.

- (b) As of the completion of the Merger, debt is required to be measured at fair value. The fair value of long-term debt is disclosed in RiskMetrics' Quarterly Report on Form 10-Q for the three months ended March 31, 2010. However, since the RiskMetrics outstanding debt was retired substantially concurrently with the completion of the Merger, the face value of the long-term debt should approximate the fair value to MSCI and, thus, no adjustment has been recognized.
- (c) Accounting guidance requires that assets acquired and liabilities assumed in a business combination that arise from contingencies be recognized at fair value if fair value can be reasonably estimated. As disclosed in RiskMetrics' Annual Report on Form 10-K for the year ended December 31, 2009, RiskMetrics has certain contingent payment obligations from its acquisition of Applied4 Technology Ltd ("Applied4"). Based on discussions with RiskMetrics, a probability of a payout was established given the recent financial performance of the Applied4 business and this payout value was calculated. There is no guarantee that this specific amount will be paid out.
- (d) As of the completion of the Merger, MSCI will provide deferred taxes and other tax adjustments as part of the accounting for the acquisition, primarily related to the estimated fair value adjustments for net acquired intangibles and the elimination of deferred tax assets on RiskMetrics' interest rate swaps, which were terminated substantially concurrently with the completion of the Merger (see Note 6. *Pro Forma Adjustments*).
- (e) Goodwill is calculated as the difference between the acquisition date fair value of the consideration expected to be transferred and the values assigned to the assets acquired and liabilities assumed. Goodwill is not amortized.

6. Pro Forma Adjustments

This note should be read in conjunction with Note 1. *Description of Transaction*, Note 2. *Basis of Presentation*, Note 4. *Consideration Transferred* and Note 5. *Estimate of Assets to be Acquired and Liabilities to be Assumed*. Adjustments included in the column under the heading "Pro Forma Adjustments" represent the following:

- (a) To eliminate advisory, legal and regulatory costs incurred, which are directly attributable to the Merger but which are not expected to have a continuing impact on the combined entity's results, as follows:

	<u>Year Ended November 30, 2009</u>	<u>Three Months Ended February 28, 2010</u>
	(in thousands)	
MSCI's advisory, legal and regulatory costs incurred	\$ —	\$ (2,250)
RiskMetrics' advisory, legal and regulatory costs incurred	—	(1,826)
Total	<u>\$ —</u>	<u>\$ (4,076)</u>

- (b) To record an estimate of intangible asset amortization:

	<u>Year Ended November 30, 2009</u>	<u>Three Months Ended February 28, 2010</u>
	(in thousands)	
Eliminate RiskMetrics' amortization of intangible assets	\$ (23,441)	\$ (5,910)
Estimated amortization of acquired intangible assets	49,991	12,498
Total	<u>\$ 26,550</u>	<u>\$ 6,588</u>

- (c) To record the estimate of forgone interest, dividend and investment income on the combined company's cash and cash equivalents and short-term investments used to effect the Merger. MSCI estimated the forgone interest income of the combined company as follows:

- the loss of RiskMetrics' entire interest income of \$0.6 million in 2009 and \$0.1 million in the first three months of 2010 has been assumed, under the assumption that all of RiskMetrics' cash would be used to partially fund the Merger; and
- the loss of approximately \$1.0 million in 2009 and \$0.4 million in the first three months of 2010 of MSCI's interest income on cash and short-term investments has been assumed, under the assumption that

a portion of the cash and all investments will be used to partially fund the Merger. MSCI's estimate is based on a weighted-average annual interest rate realized in 2009 of 0.03%.

- (d) To record the estimated incremental interest expense on the new debt to finance the Merger.

	Year Ended November 30, 2009	Three Months Ended February 28, 2010
	(in thousands)	
Eliminate RiskMetrics' interest expense	\$ (20,825)	\$ (4,993)
Eliminate MSCI's interest expense	(19,683)	(4,436)
Estimated interest expense on new debt	60,563	15,141
Estimated amortization of deferred financing fees	5,672	1,418
Estimated amortization of prepaid annual agency fees	150	38
Total	\$ 25,877	\$ 7,168

MSCI estimates interest expense of \$60.6 million in 2009 and \$15.1 million in the first three months of 2010 based upon the \$1,275.0 million of borrowings under the term loan. The calculation of the interest expense on the term loan was estimated using an interest rate of 4.75%.

In addition, MSCI incurred, or expects to incur, fees of \$34.0 million associated with the new debt. For purposes of the unaudited pro forma condensed combined statement of income, \$5.7 million and \$1.4 million of these fees were included as adjustments to pro forma interest expense in 2009 and in the first three months of 2010, respectively.

The amounts that MSCI will ultimately pay under the new debt could vary significantly from what is assumed in these unaudited pro forma condensed combined financial statements, and will depend on the actual timing and amount of repayments under the new debt and MSCI's leverage, among other factors.

- (e) To record an estimate of the tax impacts of the acquisition on the statement of income, primarily related to the additional interest expense associated with the incremental debt to finance the Merger and the additional amortization expense associated with the adjusted fair value of intangible assets resulting from the Merger. MSCI has generally assumed a 38% tax rate in 2009 and a 51% tax rate in the first three months of 2010 when estimating the tax aspects of the acquisition, representing a weighted-average estimate of the statutory tax rates in the various jurisdictions where these adjustments are reasonably expected to occur. Although not reflected in these unaudited pro forma condensed combined financial statements, the effective tax rate of the combined company could be significantly different (either higher or lower) depending on post-acquisition activities, including repatriation decisions, cash needs and the geographical mix of income.
- (f) To record an estimate of the current and long-term deferred tax impacts of the acquisition on the statement of financial condition. MSCI has generally assumed a 39% tax rate when estimating the deferred tax aspects of the acquisition. The adjustments are as follows:

	(in thousands)
Eliminate MSCI's deferred tax asset related to its interest rate swap	\$ (1,638)
Total current deferred tax adjustment	\$ (1,638)
Eliminate RiskMetrics' deferred tax asset related to its interest rate swap	\$ 5,435
Eliminate RiskMetrics' deferred tax liability related to its intangible assets	(39,801)
Eliminate RiskMetrics' deferred tax asset related to its goodwill	(4,532)
Estimated deferred tax liability related to acquired intangible assets	247,725
Total long-term deferred tax adjustment	\$ 208,827

- (g) To record the cash portion of the Merger Consideration of approximately \$1,146.7 million and to record estimated payments of \$369.9 million and \$287.7 million to retire the MSCI and RiskMetrics term facilities, respectively, which are assumed to be paid on or before the acquisition, \$4.2 million and \$13.8 million to retire the MSCI and RiskMetrics interest rate swaps, respectively, which are assumed to be paid on or before the acquisition, \$34.2 million for deferred financing fees related to the new term loan facility, \$3.0 million of which had been estimated as paid, \$20.7 million for acquisition-related transaction costs, \$2.2 million of which had been estimated as paid, and \$0.8 million in non-recurring costs related to setting up the new credit facility. The cash is expected to be sourced from a combination of bank financing of \$1,268.6 million, available cash and cash equivalents of \$788.6 million and the sale or redemption of short-term investments of \$358.1 million.
- (h) To record the elimination of \$1.4 million and \$3.3 million related to MSCI deferred financing fees included in "Prepaid and other current assets" and "Other non-current assets," respectively, and the elimination of the

MSCI debt discount of \$0.2 million and \$0.6 million included in “Current maturities of long-term debt” and “Long-term debt, net of current maturities,” respectively.

- (i) To adjust goodwill to an estimate of acquisition-date goodwill, as follows:

	(in thousands)
Eliminate RiskMetrics’ historical goodwill	\$ (325,605)
Estimated transaction goodwill	1,298,414
Total	<u>\$ 972,809</u>

- (j) To adjust intangible assets to an estimate of fair value, as follows:

	(in thousands)
Eliminate RiskMetrics’ historical intangible assets	\$ (129,499)
Estimated fair value of intangible assets acquired	633,727
Total	<u>\$ 504,228</u>

- (k) Includes the elimination of \$3.9 million of RiskMetrics’ deferred financing fees from “Other non-current assets” and the recording of \$5.8 million in “Prepaid and other assets” and \$25.4 million in “Other non-current assets” reflecting the deferred financing fees and prepaid agency fees associated with the new credit facility.

- (l) To retire the \$4.2 million carrying value related to the MSCI interest rate swap.

- (m) To record the estimated amount of current and long-term liabilities under a new term loan facility that was incurred to finance a portion of the consideration transferred by MSCI in the Merger. In connection with the Merger, MSCI entered into a senior secured credit agreement dated as of June 1, 2010 (the “Credit Agreement”) with Morgan Stanley Senior Funding, Inc., as administrative agent, Morgan Stanley & Co. Incorporated, as collateral agent, and the other lenders party thereto, which is comprised of (i) a \$1,275.0 million six-year term loan facility and (ii) a \$100.0 million five-year revolving credit facility. A discount of 0.50% was applied to the proceeds on the issuance of the term loan facility.

Borrowings under the credit facilities are expected to bear interest at a rate equal to the greater of London Interbank Offered Rate (“LIBOR”), or 1.50%, plus a margin of 3.25%, which margin, beginning a specified period after the Merger, will be subject to adjustment based on MSCI’s leverage ratio.

- (n) To record the estimated fair value of the contingent liability related to RiskMetrics’ Applied4 acquisition and to retire the \$13.8 million carrying value related to the RiskMetrics interest rate swap.

- (o) To record the stock portion of the Merger Consideration, at par, and to eliminate RiskMetrics’ common stock, at par, as follows:

	(in thousands)
Eliminate RiskMetrics common stock	\$ (671)
Issuance of MSCI class A common stock	126
Total	<u>\$ (545)</u>

- (p) To eliminate RiskMetrics’ treasury stock.

- (q) To record the stock portion of the Merger Consideration, at fair value less par, and to eliminate RiskMetrics’ additional paid-in-capital, as follows:

	(in thousands)
Eliminate RiskMetrics’ additional paid-in capital	\$ (493,772)
Issuance of MSCI class A common stock	421,694
Total	<u>\$ (68,174)</u>

- (r) To eliminate RiskMetrics’ accumulated deficit, and to record estimated non-recurring costs of MSCI for acquisition-related transaction costs and certain other costs, as follows:

	(in thousands)
Eliminate RiskMetrics’ accumulated deficit	\$ 175,012
Estimated remaining acquisition-related transaction costs assumed to be non-recurring	(18,436)
Estimated cost related to the retirement of MSCI Debt	(5,518)

	<u>(in thousands)</u>
Estimated costs related to the retirement of the MSCI interest rate swaps	(4,198)
Estimated non-recurring fees related to setting up the new credit facility	(834)
Total	<u>\$ 146,026</u>

No adjustment has been made for anticipated acquisition-related transaction costs to be incurred by RiskMetrics, which are estimated to be approximately \$12.8 million.

- (s) To eliminate RiskMetrics' accumulated other comprehensive expense and the accumulated other comprehensive expense component of the MSCI interest rate swap, as follows:

	<u>(in thousands)</u>
Eliminate RiskMetrics' accumulated other comprehensive expense	\$ 10,668
Eliminate accumulated other comprehensive expense component of the MSCI interest rate swap	2,553
Total	<u>\$ 13,221</u>

The unaudited pro forma combined basic and diluted earnings per share for the period presented are based on the combined basic and diluted weighted-average shares. The historical basic and diluted weighted average shares of RiskMetrics were assumed to be replaced by the shares and equivalents issued by MSCI to effect the Merger.

7. Forward-Looking Statements

These unaudited pro forma condensed combined financial statements may be deemed to be forward-looking statements within the meaning of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995. These statements can generally be identified by forward-looking words such as "may," "might," "should," "anticipates," "expects," "intends," "plans," "seeks," "estimates," "potential," "continue," "believes" and similar expressions, although some forward-looking statements are expressed differently. Such statements may include, but are not limited to, statements about the benefits of the merger between MSCI and RiskMetrics, including future financial and operating results, the combined company's plans, objectives, expectations and intentions and other statements that are not historical facts. These forward-looking statements are based largely on management's expectations and are subject to a number of risks and uncertainties. Actual results could differ materially from these forward-looking statements. MSCI does not undertake any obligation to update publicly or revise any forward-looking statements. The following factors, among others, could cause actual results to differ from those set forth in the forward-looking statements: the possibility that the expected synergies from the merger of MSCI and RiskMetrics will not be realized, or will not be realized within the expected time period, due to, among other things, the impact of industry regulation and pending legislation that could affect the combined company; the risk that the businesses will not be integrated successfully; disruption from the merger of MSCI and RiskMetrics making it more difficult to maintain business and operational relationships; MSCI's ability to accurately predict future market conditions; and the risk of new and changing regulation in the U.S. and internationally and the exposure to litigation and/or regulatory actions. Additional factors that could cause results to differ materially from those described in the forward-looking statements can be found in MSCI's 2009 Annual Report on Form 10-K filed with the Securities and Exchange Commission (the "SEC") on January 29, 2010, MSCI's Quarterly Report on Form 10-Q for the three months ended February 28, 2010 filed with the SEC on April 8, 2010, RiskMetrics' 2009 Annual Report on Form 10-K filed with the SEC on February 24, 2010, RiskMetrics' Quarterly Report on Form 10-Q for the three months ended March 31, 2010 filed with the SEC on May 6, 2010 and MSCI's Registration Statement on Form S-4, which was declared effective by the SEC on April 27, 2010, included in the "Risk Factors" section of each of these filings, and each company's other filings with the SEC available at the SEC's Internet site (<http://www.sec.gov>).

