

[GARDERE DRAFT OF APRIL 14, 2008]

**AMENDED AND RESTATED CREDIT AGREEMENT**

**among**

**AMERICAN LAFRANCE, LLC**

**as Borrower,**

**THE SUBSIDIARIES OF THE BORROWER  
FROM TIME TO TIME GUARANTORS HEREUNDER,**

**as Guarantors,**

**THE LENDERS PARTY HERETO,**

**and**

**PATRIARCH PARTNERS AGENCY SERVICES, LLC,**

**as Agent**

**Dated as of \_\_\_\_\_, 2008**

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**AMENDED AND RESTATED CREDIT AGREEMENT**, dated as of \_\_\_\_\_, 2008, among **AMERICAN LAFRANCE, LLC**, a Delaware limited liability company (the "Borrower"), the Domestic Subsidiaries that from time to time become guarantors hereunder (collectively, the "Guarantors"), the financial institutions and other investors from time to time lenders hereunder (collectively, the "Lenders"), and **PATRIARCH PARTNERS AGENCY SERVICES, LLC**, a Delaware limited liability company ("PPAS"), as agent for the Lenders (in such capacity, the "Agent").

## RECITALS

**WHEREAS**, the Lenders and the Borrower entered into that certain Credit Agreement dated as of DECEMBER 14, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "Original Credit Agreement") pursuant to which the Lenders agreed to make a credit facility available to the Borrower on the terms and conditions set forth therein; and

**WHEREAS**, the Borrower filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* on JANUARY 28, 2008 (the "Petition Date"), in the United States Bankruptcy Court for the District of Delaware under Case No. 08-10178 (the "Bankruptcy Proceeding"); and

**WHEREAS**, pursuant to that certain Plan of Reorganization, the Lenders agreed to create a loan facility for the Borrower to repay its prepetition and postpetition debts to the Lenders; and

**WHEREAS**, also pursuant to that certain Plan of Reorganization, the Lenders agreed to forgive \$4,400,000.00 of prepetition interest in exchange for certain equity interests in the Borrower; and

**WHEREAS**, as of the Closing Date, (i) the outstanding principal balance of the Loans (as such term is defined in the Original Credit Agreement) is [\$000,000,000.00] (the "Prepetition Loans") and the accrued and unpaid interest on the Prepetition Loans is [\$0,000,000.00] (the "Prepetition Interest"); and (ii) the outstanding principal balance of the Postpetition Loans is [\$00,000,000.00] and the accrued and unpaid interest on the Postpetition Loans is [\$0,000,000.00] (the "Postpetition Interest"); and

**WHEREAS**, the parties hereto desire to amend the Original Credit Agreement as hereinafter provided and have agreed for purposes of clarity and ease of administration, to amend the Original Credit Agreement and then restate and supersede such Original Credit Agreement in its entirety by means of this Agreement; and

**WHEREAS**, the Borrower has requested and Lenders have agreed (i) refinance the Prepetition Loans, the Postpetition Loans and the Postpetition Interest (collectively,

the “Existing Obligations”) with the Term Loan, and (ii) to provide a revolving credit facility for working capital and general corporate purposes of the Borrower, but only upon the terms and conditions set forth in this Agreement; and

**WHEREAS**, each Guarantor is willing to guaranty all of the obligations of the Borrower under the Credit Documents on the terms and conditions set forth in the Guaranty (as defined herein), and is willing to secure its guaranty obligations by granting to the Agent, for the benefit of the Agent and the Lenders, security interests in and liens upon certain of its existing and after-acquired personal and real property, including, without limitation, its intellectual property; and

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

ARTICLE I  
Defined Terms

Section 1.1 Definitions. As used in this Agreement, including, without limitation, the preamble, recitals, exhibits and schedules hereto, the following terms have the meanings stated:

“Action” against a Person means an action, suit, litigation, arbitration, investigation, complaint, contest, hearing, inquiry, inquest, audit, examination or other proceeding threatened or pending against or affecting the Person or its property, whether civil, criminal, administrative, investigative or appellate, in law or equity before any arbitrator or Governmental Body.

“Affiliate” of a Person means any other Person (a) that directly or indirectly controls, is controlled by or is under common control with, the Person or any of its Subsidiaries, (b) that directly or indirectly beneficially owns or holds 5% or more of any class of equity Security or other similar interests of the Person or any of its Subsidiaries or (c) 5% or more of the equity Securities of which is directly or indirectly beneficially owned or held by the Person or any of its Subsidiaries. For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, agreement or otherwise. Notwithstanding the foregoing, no Lender or any Affiliate of any Lender shall be an Affiliate of the Borrower or any of its Subsidiaries.

“Agent” means initially PPAS and thereafter any successor Agent appointed pursuant to Section 9.8.

“Aggregate Amounts Due” has the meaning stated in Section 2.15.

“Agreement” means this Amended and Restated Credit Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Applicable Margin” means, (a) with respect to any LIBOR Loan, 8.0% and (b) with respect to any Base Rate Loan, 5.5%.

“Asset Sale” means a sale, lease or sublease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of the businesses of the Borrower or any of its Subsidiaries, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Capital Stock of any Subsidiary of the Borrower, but excluding (i) inventory (or other assets) sold or leased in the ordinary course of business and (ii) disposals of obsolete, worn out or surplus property.

“Assignment Agreement” has the meaning stated in Section 10.4(b).

“Assignment Fee” has the meaning stated in Section 10.4(b).

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

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

“Base Rate” means, for any day, a fluctuating rate per annum equal to the “prime rate” of interest in effect for such day as published in the *Wall Street Journal*.

“Base Rate Loans” means Loans bearing interest at a rate determined by reference to the Base Rate.

“Borrower” has the meaning stated in the Preamble of this Agreement.

“Borrower Operating Agreement” means that certain Limited Liability Company Agreement of the American LaFrance, LLC, dated as of DECEMBER 14, 2005 (as amended, modified or restated from time to time).

“Borrowing” means the making of any Loan.

“Borrowing Date” means the date of a Borrowing.

“Business Day” means a day other than Saturday or Sunday or other day on which commercial banks in New York City, New York or Charlotte, North Carolina are authorized or required by law or other governmental action to close; and, with respect to any borrowings, disbursements and payments in respect of any calculations, interest rates and interest periods pertaining to LIBOR Loans, such day is also a day on which dealings are carried on for deposits in Dollars by and among banks in the London interbank market.

“Capital Expenditures” means, for any period, amounts paid or Indebtedness incurred by the Borrower or any of its Subsidiaries in connection with the purchase or lease by the Borrower or any of its Subsidiaries of any fixed asset, real property or improvements that would be treated as capital expenditures and reflected as additions to plant, property or equipment on the balance sheet of such Person in accordance with GAAP.

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

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

“Cash” means money, currency or a credit balance in any Deposit Account.

“Cash Management Account” has the meaning set forth in Section 5.1(g).

“Change of Control” means any one or more of the following events:

(i) Any individual, corporation, partnership, trust, association, pool, syndicate, or any other entity or any group of persons acting in concert (other than any Lender, any Affiliate of any Lender, the Borrower or any of its Subsidiaries)

becomes the beneficial owner, as that concept is defined in Rule 13d-3 promulgated by the Securities and Exchange Commission under the Exchange Act of securities of the Borrower possessing either (A) thirty percent (30%) or more of the voting power for the election of directors of the Borrower or (B) thirty percent (30%) or more in value of the outstanding equity securities (or the right to acquire thirty (30%) per cent or more) of the Borrower;

(ii) There shall be consummated any consolidation, merger, or other business combination involving the Borrower or the securities of the Borrower in which (A) holders of voting securities of the Borrower immediately prior to such consummation own, as a group, immediately after such consummation, voting securities of the Borrower (or, if the Borrower does not survive such transaction, voting securities of the corporation surviving such transaction) having less than fifty percent (50%) of the total voting power in an election of directors of the Borrower (or such other surviving corporation) or (B) holders of equity securities of the Borrower immediately prior to such consummation own, as a group, immediately after such consummation, equity securities of the Borrower (or, if the Borrower does not survive such transaction, voting securities of the corporation surviving such transaction) having less than fifty percent (50%) of the equity securities of the Borrower (or such other surviving corporation);

(iii) During any period of two (2) consecutive years, individuals who at the beginning of such period constitute the directors of the Borrower cease for any reason other than voluntary resignation, death, disability, retirement or as otherwise provided in the Credit Documents to constitute at least a majority thereof unless the election, or the nomination for election by the Borrower's shareholders, of each new director of the Borrower was approved by (A) a vote of at least two thirds (2/3) of the directors of the Borrower then still in office who were directors of the Borrower at the beginning of any such period or (B) the Required Lenders; or

(iv) There shall be consummated any sale, lease, exchange, or other transfer (in one transaction or a series of related transactions) of assets representing all or substantially all of the assets of the Borrower (on a consolidated basis) to a party which is not controlled by or under common control with the Borrower either before or after such transaction or series of related transactions.

“Closing Date” means the date on which all of the conditions set forth in Plan of Reorganization for the closing of the transaction contemplated by this Agreement shall have been satisfied.



“Collateral” has the meaning stated in the Security Agreement and other Collateral Documents.

“Collateral Documents” means the Security Agreement, the Pledge Agreement and Irrevocable Proxy, the Patent Security Agreement, the Copyright Security Agreement and the Trademark Security Agreement and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents (including, without limitation, all UCC financing statements and account control agreements) in order to grant to the Agent, for the benefit of Lenders and the Agent, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

“Commitments” means the Term Loan Commitments and the Revolving Credit Commitments.

“Consents” means any approval, consent, authorization or order of, notice to or registration or filing with, or any other action by, any Governmental Body or other Person.

“Contract Rate” has the meaning stated in Section 10.14(a).

“Copyright Security Agreement” means the Copyright Collateral Security Agreement in the form of Attachment C to the Security Agreement.

“Credit Document” means any of this Agreement, the Term Notes (if any), the Revolving Credit Notes (if any), the Collateral Documents, the Guaranty, and all other documents, instruments or agreements executed and delivered by a Credit Party for the benefit of Agent or any Lender in connection herewith.

“Credit Party” means each Person (other than the Agent or any Lender or any Affiliate or representative thereof) from time to time party to a Credit Document.

“Currency Agreement” means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with the operations of the Borrower or any of its Subsidiaries.

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

“Deposit Account” means any deposit account (as such term is defined in the UCC as adopted and in effect in the State of New York), including, without limitation, a demand, time, savings, passbook or like account with a bank, savings

and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“Dollars” and the sign “\$” mean the lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary of the Borrower organized under the laws of the United States of America or any State thereof.

“Eligible Assignee” means (a) any Lender or any Affiliate of any Lender, (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act) and that extends credit or buys loans as one of its businesses and/or (c) any other Person approved by the Agent; provided, neither Borrower nor any Affiliate of the Borrower shall be an Eligible Assignee.

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

“Environmental Laws” means all federal, state, local and foreign laws (including without limitation common law), statutes, regulations and rules whether now or hereinafter in effect relating in any way to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or health and safety matters, including, without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act, in each case as amended, and all rules, regulations, judgments, decrees, orders and licenses arising under all such laws.

“Environmental Liability” means any actual, alleged or contingent liability or obligations of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based on (a) the violations or alleged violations of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Material, (c) exposure to any Hazardous Material, (d) the release or threatened release of any Hazardous Material into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with any of the foregoing.

“Environmental Permits” means all permits, licenses, authorizations, registrations and other governmental consents required by applicable Environmental Laws for the use, storage, treatment, transportation, release, emission and disposal of raw materials, by-products, wastes and other substances used or produced by or otherwise relating to the operations of the Borrower and any of its Subsidiaries.

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

“ERISA Affiliate” means, as applied to any Person, (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member, (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member, and (c) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member. Any former ERISA Affiliate of the Borrower or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of the Borrower or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of the Borrower or such Subsidiary and with respect to liabilities arising after such period for which the Borrower or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

“ERISA Event” means (a) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation), (b) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan, (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA, (d) the withdrawal by the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability pursuant to Section 4063 or 4064 of ERISA, (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any

Pension Plan, (f) the imposition of liability on the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA, (g) the withdrawal of the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA, (h) the occurrence of an act or omission which could give rise to the imposition on the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (1), or Section 4071 of ERISA in respect of any Employee Benefit Plan, (i) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan, (j) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code, or (k) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan.

“Event of Default” means each of the conditions or events set forth in Section 8.1.

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

“Financial Officer Certification” means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of the Borrower that such financial statements fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries on a consolidated basis as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to the absence of footnotes and changes resulting from audit and normal year-end adjustments.

“Financial Plan” means the consolidated plan and financial forecast to be provided to the Agent and the Lender pursuant to Section 3.3(a) for the twelve (12) month period beginning with the Fiscal Year in which the Closing Date

occurs, including a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of the Borrower and its Subsidiaries for twelve months, together with an explanation of the assumptions on which such forecasts are based.

“Financials” means, with respect to any Person for any period, the balance sheet of such Person as at the end of such period, and the related statement of income and expense and statement of cash flow of such Person for such period, each setting forth in comparative form the figures for the previous comparable fiscal period, all in reasonable detail and prepared in accordance with GAAP.

“Fiscal Quarter” means a fiscal quarter of any Fiscal Year.

“Fiscal Year” means the fiscal year of the Borrower and its Subsidiaries ending on December 31 of each calendar year.

“Foreign Lender” has the meaning stated in Section 7.2(a).

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

“Funding Notice” means a notice substantially in the form of Exhibit B.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time, consistently applied throughout the periods to which reference is made.

“Governmental Body” means any agency, bureau, commission, court, department, official, political subdivision, tribunal or other instrumentality of any administrative, judicial, legislative, executive, regulatory, police or taxing authority of any government, whether supranational, national, federal, state, regional, provincial, local, domestic or foreign.

“Guaranty” means the Guaranty Agreement executed by a Guarantor from time to time in form and content satisfactory to Lender in its sole discretion.

“Guarantors” has the meaning stated in the Preamble to this Agreement.

“Hazardous Materials” means any hazardous or toxic substance, waste, contaminant, pollutant, gas or material, including, without limitation, radioactive materials, oil, petroleum and petroleum products and constituents thereof, which are regulated under any Environmental Law, including, without limitation, any substance, waste or material which is (a) designated a “pollutant”, “hazardous substance”, “extremely hazardous substance” or “toxic chemical” under any

Environmental Law, or (b) regulated in any way under the Regulations of any state where the Borrower or any of its Subsidiaries conducts its business or owns any real property or has any leasehold or in which any Relevant Property is located.

“Hedge Agreement” means an Interest Rate Agreement or a Currency Agreement entered into in order to satisfy the requirements of this Agreement or otherwise in the ordinary course of the business of the Borrower or any of its Subsidiaries.

“Inactive Subsidiaries” means the Subsidiaries set forth on Schedule 4.1(m).

“Indebtedness” means, with respect to any Person, without duplication, the following: (i) all indebtedness of such Person for borrowed money, (ii) all obligations of such Person for the deferred purchase price of property or services other than accounts payable and accrued liabilities that would be classified as current liabilities under GAAP which payables and expenses are incurred in respect of property or services purchased in the ordinary course of business, (iii) all obligations of such Person evidenced by notes, bonds, debentures or similar borrowing or securities instruments, (iv) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (v) all obligations of such Person as lessee under Capital Leases, (vi) all obligations of such Person in respect of banker’s acceptances and letters of credit, (vii) all obligations of such Person secured by Liens on the assets and property of such Person, (viii) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any capital stock or other ownership or profit interest in such Person or any other Person or any warrants, rights or options to acquire such capital stock, (ix) all obligations of such Person in respect of any guaranty by such Person of any obligation of another Person of the type described in clauses (i) through (viii) of this definition and (x) all obligations of another Person of the type described in clauses (i) through (ix) secured by a Lien on the property or assets of such Person (whether or not such Person is otherwise liable for such obligations of such other Person).

“Intellectual Property” means, collectively, all copyrights, all patents and all trademarks, together with: (a) all inventions, processes, production methods, proprietary information, know-how and trade secrets; (b) all licenses or user or other agreements granted to the Borrower or any of its Subsidiaries with respect to any of the foregoing, in each case whether now or hereafter owned or used including the licenses or other agreements with respect to any Collateral; (c) all customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, recorded knowledge, surveys, engineering reports, test reports, manuals, materials standards, processing standards, performance standards,

catalogs, computer and automatic machinery software and programs; (d) all field repair data, sales data and other information relating to sales or service of products now or hereafter manufactured; (e) all accounting information and all media in which or on which any information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data; and (f) all causes of action, claims and warranties, in each case, now or hereafter owned or acquired by the Borrower or any of its Subsidiaries in respect of any of the items listed above.

“Interest Period” means consecutive one-month periods, beginning on the date hereof and ending on the Maturity Date; provided that:

(i) the initial Interest Period shall begin on the Closing Date and end on the last day of \_\_\_\_\_ 2008. Thereafter, each subsequent Interest Period will begin on the day following the last day of the preceding Interest Period (with such last day of such preceding Interest Period determined with reference to clauses (ii) through (v) below;

(ii) any Interest Period that would otherwise end on a day that is not a Business Day shall, subject to the provisions of clause (iv) below, be extended to the next succeeding Business Day unless such Business Day falls in the next calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (iv) below, end on the last Business Day of a calendar month;

(iv) any Interest Period that would otherwise end after the Maturity Date shall end on the Maturity Date; and

(v) except as otherwise provided under clause (iii) or (iv) above, no Interest Period shall have a duration of less than one month and if any applicable Interest Period would be for a shorter period, such Interest Period shall not be available hereunder.

“Interest Rate Agreement” means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with the operation of the Borrower or any of its Subsidiaries.

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

“Inventory” has the meaning assigned to such term in the UCC as adopted and in effect in the State of New York.

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

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

“Knowledge “ means, with respect to the Borrower or any Credit Party as the context requires, the knowledge of the Borrower’s or such Credit Party’s Authorized Officers, after reasonable inquiry by such Authorized Officers.

“Lenders” has the meaning set forth in the Preamble to this Agreement.

“LIBOR” means, as to any Loan for any Interest Period, the rate quoted by Bloomberg Information Service (or by any successor or substitute for such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided by such Service, as determined by the Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days before the beginning of such Interest Period, as the rate for Dollar deposits with a maturity comparable to such Interest Period. If such rate is not available at such time for any reason, LIBOR as to any LIBOR Loan for any Interest Period shall be the arithmetic



mean (rounded upward, if necessary, to the next 1/16 of 1%) of the offered quotations of at least two Reference Banks to the prime banks in the London interbank market for dollar deposits with a maturity comparable to such Interest Period at approximately 11:00 a.m., London time, two Business Days before the beginning of such Interest Period. For purposes of this definition, “Reference Banks” shall mean major banks in the London interbank market selected by the Agent. For all purposes hereunder, LIBOR shall never be below 2.0% per annum.

“LIBOR Loans” means Loans bearing interest at a rate determined by reference to LIBOR.

“Lien” means any encumbrance, mortgage, pledge, hypothecation, charge, assignment, lien, restriction or other security interest of any kind securing any obligation of any Person.

“Loans” means the Term Loans and the Revolving Credit Loans.

“Margin Stock” as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

“Material Adverse Effect” means any material adverse effect on the financial condition or business operations of the Borrower and its Subsidiaries taken as a whole or material impairment of the ability of the Borrower to perform its obligations hereunder or under of any of the other Credit Documents.

“Material Contracts” means, with respect to any Person, each contract any replacement or a substitute for any such contract to which such Person is a party which is material to the business, financial condition, operations, performance, properties or reasonably foreseeable business prospects of such Person.

“Maturity Date” means the earlier of (a) \_\_\_\_\_, 2013 and (b) the date that the Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

“Multiemployer Plan” means any Employee Benefit Plan which is a “multi-employer plan” as defined in Section 3(37) of ERISA.

“Net Asset Sale Proceeds” means, for the Borrower, with respect to any Asset Sale, an amount equal to: (a) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by the Borrower or any of its Subsidiaries from such Asset Sale, minus (b) any bona fide direct costs incurred in connection with such Asset Sale, including (i) income or gains taxes actually payable by the seller as a result of any gain recognized in connection

with such Asset Sale, (ii) payment of the outstanding principal amount of and premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale and (iii) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by the Borrower or any of its Subsidiaries in connection with such Asset Sale.

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

"Notes" means the Term Notes and the Revolving Credit Notes.

"Obligations" means all indebtedness, obligations and liabilities of each Credit Party from time to time owed to the Agent, the Lenders or any of them or their respective Affiliates direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any other Credit Document or in respect of any of the Loans, the Notes or any other instruments at any time evidencing any thereof.

"Patent Security Agreement" means the Patent Collateral Security Agreement in the form attached as Attachment B to the Security Agreement.

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

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

“Permit” means any permit, license, approval, consent, permission, notice, franchise, confirmation, endorsement, waiver, certification, registration, qualification, clearance or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any federal, state, local or foreign Regulation.

“Permitted Indebtedness” means the Indebtedness permitted pursuant to Section 6.1(a).

“Permitted Liens” means each of the Liens permitted pursuant to Section 6.1(b).

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

“Pledge Agreement and Irrevocable Proxy” means the Pledge Agreement and Irrevocable Proxy, dated as DECEMBER 14, 2005, among the Borrower and PPAS (as the same may be amended, modified or restated from time to time).

“PPAS” has the meaning set forth in the Preamble to this Agreement.

“Prime Rate” means, the floating rate of interest per annum published in the Wall Street Journal as being the “prime rate” of interest charged by banks, such interest rate to be adjusted by the Agent on the effective date of any change thereafter.

“Principal Office” means, for the Agent, its office located at 227 West Trade Street, Suite 1400, Charlotte, North Carolina, 28202, Attention: Michael Fey, or such other office as the Agent may from time to time designate in writing to the Borrower and each Lender.

“Pro Rata Share” means

(a) with respect to all payments, computations and other matters relating to the Term Loans of any Lender, (i) prior to the Term Loan Commitments being terminated or reduced to zero, the percentage obtained by dividing (A) the Term Loan Commitment of such Lender by (B) the aggregate Term Loan Commitments of all Lenders and (ii) from and after the time that the Term Loan Commitments have been terminated or reduced to zero, the percentage obtained by dividing (A) the aggregate principal amount of such Lender’s Term Loans by (B) the aggregate principal amount of Term Loans of all Lenders; and

(b) with respect to all payments, computations and other matters relating to the Revolving Credit Commitment or Revolving Credit Loans of any Lender, (i) prior to the Revolving Credit Commitments being terminated or reduced to zero, the percentage obtained by dividing (A) the Revolving Credit Commitment of such Lender by (B) the aggregate Revolving Credit Commitments of all Lenders and (ii) from and after the time that the Revolving Credit Commitments have been terminated or reduced to zero, the percentage obtained by dividing (A) the aggregate principal amount of Revolving Credit Loans of such Lender by (B) the aggregate principal amount of Revolving Credit Loans of all Lenders.

For all other purposes with respect to each Lender, “Pro Rata Share” means the percentage obtained by dividing (x) the aggregate principal amount of the Loans of such Lender by (y) the aggregate principal amount of the Loans of all Lenders.

“Register” has the meaning stated in Section 2.6(b).

“Regulation” means each applicable law, rule, regulation, order, guidance or recommendation (or any change in its interpretation or administration) by any Governmental Body, central bank or comparable agency and any request or directive (whether or not having the force of law) of any of those Persons and each judgment, injunction, order, writ, decree or award of any Governmental Body, arbitrator or other Person.

“Relevant Property” means, for the Borrower, all sites, facilities, locations, real property and leaseholds (a) presently or formerly owned, leased, used or operated by the Borrower or any of its Subsidiaries (whether or not such properties are currently owned, leased, used or operated by the Borrower or any of its Subsidiaries), (b) at which any Hazardous Material has been transported, disposed, treated, stored or released by the Borrower or any of its Subsidiaries, or (c) that are directly adjacent to any sites, facilities, locations, real property or leaseholds presently or formerly owned, leased, used or operated by the Borrower or any of its Subsidiaries.

“Required Lenders” means, at any time, one or more Lenders having or holding a Loan, and representing more than 50% of the sum of the aggregate outstanding principal amount of the Loans of all Lenders.

“Restricted Junior Payment” means, for the Borrower and/or any of its Subsidiaries, (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of the Borrower or such Subsidiary now or hereafter outstanding, except a dividend payable solely in shares of that class of Capital Stock to the holders of that class, (b) any redemption, retirement,

sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of the Borrower or such Subsidiary now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of the Borrower or such Subsidiary now or hereafter outstanding.

“Revolving Credit Commitment” means (i) with respect to each Lender that is a lender on the Closing Date, the amount set forth opposite such Lender’s name on Schedule 2.1 as such Lender’s “Revolving Credit Commitment” and (ii) in the case of any lender that becomes a Lender after the Closing Date, the amount specified as such Lender’s “Revolving Credit Commitment” in the Assignment and Acceptance pursuant to which such Lender assumed such Revolving Credit Commitment, in each case as the same may be reduced or increased from time to time pursuant to the terms hereof.

“Revolving Credit Commitment Period” means the period from the date of this Agreement to but excluding the Maturity Date.

“Revolving Credit Loan” means the Revolving Credit Loan made by a Lender to the Borrower pursuant to Section 2.2.

“Revolving Note” has the meaning stated in Section 2.6(c).

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

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

“Security Agreement” means the Security Agreement, dated as of DECEMBER 14, 2005, among the Borrower, the Guarantors and PPAS (as the same may be amended, modified or restated from time to time).

“Solvent” means, with respect to any Person, that as of the date of determination both (a)(i) the sum of such Person’s debt (including contingent liabilities) does not exceed all of its property, at a fair valuation, (ii) the present fair saleable value of the property of such Person is not less than the amount that will be required to

pay the probable liabilities on such Person's then existing debts as they become absolute, and matured, (iii) such Person's capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction, and (iv) such Person does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due, and (b) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Structuring Fee" has the meaning stated in Section 2.9(c).

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

"Tax" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed, provided, "Tax on the overall net income" of a Person shall be construed as a reference to a tax imposed by the jurisdiction in which that Person is organized or in which that Person's applicable principal office (and/or, in the case of a Lender, its lending office) is located or in which that Person (and/or, in the case of a Lender, its lending, office) is deemed to be doing business on all or part of the net income, profits or gains (whether worldwide, or only insofar as such income, profits or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable lending office).

“Term Loan Commitment” means (a) with respect to each Lender that is a lender on the Closing Date, the amount set forth opposite such Lender’s name on Schedule 2.1 as such Lender’s “Term Loan Commitment” and (b) in the case of any lender that becomes a Lender after the Closing Date, the amount specified as such Lender’s “Term Loan Commitment” in the Assignment and Acceptance pursuant to which such Lender assumed such Term Loan Commitment, in each case as the same may be reduced or increased from time to time pursuant to the terms hereof.

“Term Loan” means a Term Loan made by a Lender to the Borrower pursuant to Section 2.1.

“Term Note” has the meaning stated in Section 2.6(c).

“Trademark Security Agreement” means the Trademark Collateral Security Agreement in the form attached as Attachment A to the Security Agreement.

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

## ARTICLE II

### Loans

#### Section 2.1 Term Loans.

(a) Subject to the terms and conditions hereof and relying on the representations and warranties herein set forth, each Lender severally agrees to make a single Term Loan to the Borrower on the Closing Date in an amount equal to but not exceeding such Lender’s Term Loan Commitment.

(b) Any amount borrowed under this Section 2.1 and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.11 and 2.12, all amounts owed under this Section 2.1 shall be paid in full no later than the Maturity Date.

(c) Any amount borrowed under this Section 2.1 shall (i) bear interest as provided in Section 2.7(a) hereof and (ii) be entitled to the security interests, collateral and other rights and benefits provided pursuant to this Agreement and the other Credit Documents.

#### Section 2.2 Revolving Credit Loans.

(a) During the Revolving Credit Commitment Period, subject to and upon the terms and conditions hereof, each Lender, severally, and not jointly and

severally, agrees to make one or more Revolving Credit Loans to Borrower pursuant to Section 2.3 in an aggregate amount up to but not exceeding such Lender's Revolving Credit Commitment. Amounts borrowed pursuant to this Section 2.2 may be repaid and reborrowed during the Revolving Credit Commitment Period.

(b) Each Lender's Revolving Credit Commitment shall expire on the Maturity Date and all Revolving Credit Loans and all other amounts owed hereunder with respect to the Revolving Credit Loans and the Revolving Credit Commitments shall be paid in full no later than such date.

(c) The Revolving Credit Loans shall (i) bear interest as provided in Section 2.7(a) hereof and (ii) be entitled to the security interests, collateral and other rights and benefits provided pursuant to the other Credit Documents.

### Section 2.3 Borrowing Mechanics.

(a) Loans shall be made in an aggregate minimum amount of \$25,000 and integral multiples of \$25,000 in excess of that amount.

(b) Whenever the Borrower desires that Lenders make Term Loans or Revolving Credit Loans, as applicable, the Borrower shall deliver to Agent a fully executed Funding Notice no later than 10:00 a.m. (New York City time) at least one (1) Business Day in advance of the proposed Borrowing Date, which Borrowing Date shall be a Business Day.

(c) Notice of receipt of each Funding Notice in respect of Revolving Credit Loans, together with the amount of each Lender's Pro Rata Share thereof, together with the applicable interest rate, shall be provided by Agent to each applicable Lender by facsimile with reasonable promptness, but (provided, Agent shall have received such notice by 10:00 a.m. (New York City time)) not later than 4:00 p.m. (New York City time) on the same day as Agent's receipt of such Funding Notice from Borrower.

(d) Each Lender shall make the amount of its Revolving Credit Loan available to Agent no later than 2:00 p.m. (New York City time) on the applicable Borrowing Date by wire transfer of same day funds in Dollars, at the Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Agent shall make the proceeds of such Revolving Credit Loans available to Borrower on the applicable Borrowing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Credit Loans received by Agent from Lenders to be deposited by wire transfer to the account of the Borrower designated in writing to Agent by



Borrower.

Section 2.4 Pro Rata Shares. All Loans shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make the Loans hereunder nor shall any Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder. In the event of a default by a Lender with respect to the funding of its Commitment, in addition to any rights, claims and causes of action that the Borrower may have against such defaulting Lender, the Agent shall use its commercially reasonable efforts to obtain a substitute Commitment from a new Lender or Lenders, some of or all of the non-defaulting Lenders or a combination thereof, in an amount equal to the defaulting Lender's remaining Commitment.

Section 2.5 Use of Proceeds. The proceeds of (a) the Revolving Credit Loans made on the Closing Date and during the Revolving Commitment Period and (b) the Term Loans made on the Closing Date, in each case, shall be used by Borrower and its Subsidiaries solely (x) refinance the Existing Debt, (y) for working capital and general corporate purposes of the Borrower and its Subsidiaries and (z) to pay the costs and expenses related to the transactions contemplated by this Agreement. No portion of the proceeds of any Borrowing shall be used by the Borrower or any of its Subsidiaries in any manner that might cause such Borrowing or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act, in each case as in effect on the date or dates of such Borrowing and such use of proceeds.

Section 2.6 Evidence of Debt; Register; Lenders' Books and Records; Notes.

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

(b) Register. Agent shall maintain, as the Borrower's agent, at Agent's Principal Office a register for the recordation of the names and addresses of each Lender and such Lender's Commitments and the fees, interest and

principal amount of Loans owed to each Lender (the “Register”). The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Agent shall record in the Register the Commitments, and the fees, interest and the outstanding balance of the Loans, and each repayment or prepayment in respect of the principal amount of and interest, fees and other amounts with respect to the Loans, and any such recordation shall be conclusive and binding on the Borrower and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Lender’s Commitments or the Borrower’s Obligations in respect of any Loan. No transfer of the Commitments, the Loans and/or any interests therein shall be effective until such transfer is recorded in the Register.

(c) Notes. If so requested by any Lender by written notice to Borrower (with a copy to Agent) at least two (2) Business Days prior to the Closing Date, or at any time thereafter, Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.4) on the Closing Date (or, if such request is delivered after the Closing Date, promptly after the Borrower’s receipt of such request) (i) a promissory note evidencing the Revolving Loans in form and substance satisfactory to Agent in its sole discretion (each, a “Revolving Note”), to evidence such Lender’s Revolving Credit Loan and/or (ii) a promissory note evidencing the Term Loan in form and substance satisfactory to Agent in its sole discretion (each, a “Term Note”), to evidence such Lender’s Term Loan.

#### Section 2.7 Interest on Loans.

(a) Applicable Rate. Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) at a rate per annum equal to LIBOR plus the Applicable Margin.

(b) Calculation of Interest Rates. Interest payable pursuant to this Section 2.7 shall be computed on the basis of a 360-day year for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an interest period applicable to such Loan shall be included, and the date of payment of such Loan or the expiration date of an interest period applicable to such Loan shall be excluded; provided, if such Loan is repaid on the same day on which it is made, one day’s interest shall be paid on such Loan.

(c) Payment of Interest. Interest on the Loans shall be payable to the Agent on behalf of the Lenders in arrears on (i) the first day of each calendar month, (ii) the date of any prepayment of the Loans, whether voluntary or mandatory, to the extent accrued on the amount being prepaid, and (iii) the Maturity Date, including final maturity.

(d) Default Interest. Upon the occurrence and during the continuance of an Event of Default described in Section 8.1, the principal amount of all Loans and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder not paid when due, in each case whether at stated maturity, by notice of prepayment, by acceleration or otherwise, shall thereafter bear interest (including, without limitation, interest, as provided in this Agreement, accruing after the filing of a petition initiating any insolvency proceedings, whether or not such interest accrues or is recoverable against the Borrower after the filing of such petition for purposes of the Bankruptcy Code or is an allowed claim in such proceeding) payable on demand at a rate that is 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.7 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or any Lender.

Section 2.8 Changed Circumstances. If the introduction of or any change in or in the interpretation of (in each case, after the date hereof) any law or regulation applicable to any Lender makes it unlawful, or any Governmental Body asserts, after the date hereof, that it is unlawful, for any Lender to perform its obligations hereunder to maintain the Loans at LIBOR, such Lender shall notify the Agent of such event and the Agent shall notify the Borrower of such event, and the right of the Borrower to apply LIBOR to any subsequent Interest Period shall be suspended until the Agent shall notify the Borrower that the circumstances causing such suspension no longer exist, and the Borrower shall forthwith prepay in full the Loans then outstanding, and shall pay all interest accrued thereon through the date of such prepayment, unless the Borrower, within five (5) Business Days after such notice from the Agent, requests that the interest rate applicable to the Loans be converted from LIBOR to the Base Rate as in effect from time to time; provided, that if the date of such repayment or proposed conversion is not the last day of an Interest Period applicable to the Loans, the Borrower shall also pay any amount due pursuant to Section 7.5.

Section 2.9 Fees.

(a) The Borrower agrees to pay to the Lenders an unused commitment fee (the "Revolving Commitment Fee") equal to (a) the average of the daily difference between (i) the Revolving Credit Commitments, and (ii) the aggregate

principal amount of outstanding Revolving Credit Loans times (b) a rate equal to 0.75% per annum. The Revolving Commitment Fee shall be calculated on the basis of a 360-day year and the actual numbers of days elapsed and shall be payable monthly in arrears on each Interest Payment Date according to each Lender's Pro Rata Share of the Revolving Credit Commitments.

(b) Agent Fee. The Borrower agrees to pay to the Agent a fee (the "Agent Fee") in an amount equal to \$75,000 on each anniversary of the Closing Date on terms and conditions separately agreed upon by the Agent and the Borrower.

(c) Structuring Fee. The Borrower agrees to pay to Agent on the Closing Date a non-refundable fee (the "Structuring Fee") in an amount equal to 2.0% times the sum of the aggregate Revolving Credit Commitments (prior to the making of any Revolving Credit Loans pursuant to Section 2.2(a)). Such Structuring Fee shall be earned by the Agent on the date such fee is paid by the Borrower.

Section 2.10 Repayment. The Loans shall be due and payable, and Borrower shall be required to repay to the Agent on behalf of the Lenders all of the Obligations (including, without limitation, all accrued and unpaid principal and interest on the principal amounts of the Loans) on the Maturity Date.

Section 2.11 Optional Prepayments.

(a) Optional Prepayments. At any time and from time to time (i) with respect to Term Loans, the Borrower may prepay, without premium or penalty (except as expressly provided in Section 7.5 hereof), any Term Loans on any Business Day in whole or in part, in an aggregate minimum amount of \$25,000 and integral multiples of \$25,000 in excess of that amount (or such lesser amount that shall constitute the entire amount of the Loans then outstanding) and (ii) with respect to Revolving Credit Loans, the Borrower may (A) prepay, without premium or penalty (except as expressly provided in Section 7.5 hereof), any Revolving Credit Loans on any Business Day in whole or in part in an aggregate minimum amount of \$25,000 and integral multiples of \$25,000 in excess of that amount (or such lesser amount that shall constitute the entire amount of the Loans then outstanding) or (B) reduce the Revolving Credit Commitment, without premium or penalty (provided that such Revolving Credit Commitment may not be reduced below the outstanding Revolving Credit Loans), on any Business Day in whole or in part in an aggregate minimum amount of \$50,000 and integral multiples of \$50,000 in excess of that amount, and the aggregate Revolving Credit Commitment shall be permanently reduced by such amount. The Term

Loans and Revolving Credit Loans shall be prepaid according to each Lender's Pro Rata Share.

(b) Notice of Optional Prepayment. All such prepayments shall be made on a Business Day and upon not less than one Business Day's prior written or telephonic notice, in each case given to Agent by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Agent (and Agent will promptly transmit such telephonic or original notice for Term Loans and/or Revolving Credit Loans, as the case may be, by facsimile or telephone to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein; provided that any prepayment that is contingent upon the consummation of a Change of Control, a refinancing of the Loans or other similar event (each, a "Prepayment Special Event") shall be revocable and/or subject to amendment based upon the status of the consummation of such Prepayment Special Event. In the case of an optional prepayment of Revolving Credit Loans, the Borrower shall specify in such notice whether such prepayment shall be applied to permanently reduce the Revolving Credit Commitment or to reduce the outstanding amount of Revolving Credit Loans without reducing the amount of the Revolving Credit Commitment; provided in the event Borrower fails to specify how the prepayment of Revolving Credit Loans shall be applied, such prepayment shall be applied to reduce the outstanding amount of Revolving Credit Loans without reducing the amount of the Revolving Credit Commitment.

Section 2.12 Mandatory Prepayments; Mandatory Commitment Reductions.

(a) Excess Over Commitment. If at any time the outstanding principal amount of the Term Loans exceeds the Term Loan Commitment, the Borrower shall immediately pay the amount of such excess to the Agent for application to the Term Loans. If at any time the outstanding principal amount of the Revolving Credit Loans exceeds the Revolving Credit Commitment, the Borrower shall immediately pay the amount of such excess to the Agent for application to the Revolving Credit Loans.

(b) Asset Sales. No later than the first Business Day following the date of receipt by the Borrower or any of its Subsidiaries of any Net Asset Sale Proceeds, the Borrower shall prepay the Loans and/or the Commitments shall be permanently reduced as set forth in Section 2.13(b) in an aggregate amount equal to such Net Asset Sale Proceeds; provided (i) so long as no Default or Event of Default shall have occurred and be continuing, and (ii) to the extent that aggregate Net Asset Sale Proceeds from the Closing Date through the applicable date of determination do not exceed \$100,000, Borrower shall have the option, directly or

through one or more of its Subsidiaries, to invest Net Asset Sale Proceeds within one hundred eighty (180) days of receipt thereof in long term productive assets of the general type used in the business of the Borrower and its Subsidiaries; provided, further, pending any such investment all such Net Asset Sale Proceeds shall be applied to prepay outstanding Revolving Credit Loans (without a reduction in Revolving Credit Commitments).

(c) Insurance/Condemnation Proceeds. No later than the first Business Day following the date of receipt by the Borrower or any of its Subsidiaries, or Agent as loss payee, of any Net Insurance/Condemnation Proceeds, Borrower shall prepay the Loans and/or the Commitments shall be permanently reduced as set forth in Section 2.13(b) in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided (i) so long as no Default or Event of Default shall have occurred and be continuing, and (ii) to the extent that aggregate Net Insurance/Condemnation Proceeds from the Closing Date through the applicable date of determination do not exceed \$175,000, Borrower shall have the option, directly or through one or more of its Subsidiaries to invest such Net Insurance/Condemnation Proceeds within one hundred eighty (180) days of receipt thereof in long term productive assets of the general type used in the business of the Borrower and its Subsidiaries, which investment may include the repair, restoration or replacement of the applicable assets thereof, provided, further, pending any such investment all such Net Insurance/Condemnation Proceeds, as the case may be, shall be applied to prepay outstanding Revolving Credit Loans (without a reduction in Revolving Credit Commitments).

(d) Prepayment Certificate. Concurrently with any prepayment of the Loans and/or reduction of the Commitments pursuant to Section 2.12(a) through 2.12(c), Borrower shall deliver to Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds. In the event that Borrower shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Borrower shall promptly make an additional prepayment of the Loans in an amount equal to such excess, and Borrower shall concurrently therewith deliver to Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

### Section 2.13 Application of Prepayments.

(a) Application of Mandatory Prepayments. Any amount required to be paid pursuant to Section 2.12(a) through Section 2.12(c) shall be applied first, to prepay the Term Loans and second, after the payment in full of the Term Loans, to prepay the Revolving Credit Loans to the full extent thereof and to permanently reduce the Revolving Credit Commitments by the amount of such prepayment.

Section 2.14 General Provisions Regarding Payments.

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

(b) Non-Conforming Payments. The Agent shall deem any payment by or on behalf of the Borrower that is not made to the Agent in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Agent until the later of (i) the time such funds become available funds and (ii) the applicable next Business Day. Agent shall give prompt telephonic notice to Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1. Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.7 from the date such amount was due and payable until the date such amount is paid in full.

(c) Payments to Include Accrued Interest. All payments in respect of the principal amount of any Loan (whether mandatory or optional) shall include payment of accrued interest on the principal amount being, repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest before application to principal.

(d) Distributions by Agent. Agent shall promptly distribute to each Lender by wire transfer, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Agent. If and to the extent that Agent has not forwarded to any Lender such Lender's share of any such payment on the same Business Day as such payment is received (or deemed received) from the Borrower, Agent shall pay to such Lender interest on such amount at the Base Rate for each day until payment is received by such Lender.

(e) Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder.

Section 2.15 Ratable Sharing. Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "Aggregate Amounts Due" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of the Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. The Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by the Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

Section 2.16 Termination or Reduction of Commitments. Unless previously terminated, the Term Commitments and the Revolving Credit Commitments will terminate on the Maturity Date. Upon the making of any Term Loan, each Lender's Term Commitments shall be permanently reduced by an amount equal to the principal amount of the Term Loan made by such Lender. The Revolving Credit Commitments shall be permanently reduced in accordance with Section 2.11 and Section 2.12.

### ARTICLE III Conditions Precedent; Conditions Subsequent



Section 3.1 Conditions Precedent; Closing Date. The obligation of any Lender to make any Loan and the other financial accommodations described herein on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.1, of the following conditions on or before the Closing Date:

(a) Secretary's Certificate. The Lenders shall have received a certificate of the secretary or assistant secretary, the manager or the general partner, as the case may be, of each Credit Party, with respect to (i) the articles of incorporation or certificate of formation, as the case may be, of such Credit Party, (ii) the bylaws, operating agreement or limited partnership agreement, as the case may be, of such Credit Party, (iii) the resolutions of the board of directors, manager or general partner, as the case may be, of such Credit Party approving each Credit Document to which such Credit Party is a party and the other documents to be delivered by such Credit Party under the Credit Documents and the performance of the obligations of such Credit Party thereunder, and (iv) the names and true signatures of the officers of such Credit Party or such other persons authorized to sign each Credit Document to which such Credit Party is a party and the other documents to be delivered by it under the Credit Documents.

(b) Organizational and Capital Structure. The organizational structure and the capital structure of the Borrower and its Subsidiaries, shall be as set forth in Section 4.1(m) and Schedule 4.1(m).

(c) Good Standing Certificates. The Lenders shall have received a good standing certificate from the applicable Governmental Body of each Credit Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Closing Date.

(d) Evidence of Insurance. Lenders shall have received a certificate from the Borrower's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.1(c) is in full force and effect and that Agent, for the benefit of Lenders and Agent, has been named as additional insured and loss payee thereunder.

(e) Other Actions to Perfect Security Interests. The Lenders shall have received evidence that each Credit Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument, and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by the Lenders.

(f) Other Information. The Agent and Lenders shall have received

any other financial or non-financial information regarding the Borrower and its Subsidiaries as the Agent or any Lender may reasonably request.

(g) Proceedings. All proceedings taken or to be taken in connection with the transactions contemplated by this Agreement shall be satisfactory to the Agent and Lenders and their counsel.

(h) Fees and Costs. The Borrower shall have paid all fees and expenses (including attorneys' fees) and out of pocket expenses of the Lenders and Agent incurred in connection with this Agreement and the other Credit Documents.

Section 3.2 Conditions to Each Borrowing. The obligation of each Lender to make any Loan on any Borrowing Date, including the Closing Date, is subject to the satisfaction, or waiver in accordance with Section 10.1, of the following conditions precedent:

(a) Funding Notice. The Agent and Lenders shall have received a fully executed and delivered Funding Notice, in accordance with Section 2.3. Each Funding Notice shall be executed by an Authorized Officer of the Borrower in a writing delivered to the Agent and Lenders on a Business Day. In lieu of delivering a Funding Notice, the Borrower may give the Agent and Lenders telephonic notice by the required time of any proposed Borrowing; provided, each such notice shall be promptly confirmed in writing by delivery of the Funding Notice to the Agent and Lenders on or before the applicable date of Borrowing. The Agent shall not incur any liability to Borrower in acting upon any telephonic notice referred to above that Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of the Borrower or for otherwise acting in good faith.

(b) Representations and Warranties. As of such Borrowing Date, the representations, warranties and covenants of the Credit Parties contained in the Credit Documents shall be true, correct and complied with on and as of that Borrowing Date, except as to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall be true, correct and complied with on and as of such earlier date.

(c) No Default or Event of Default. As of such Borrowing Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Borrowing that would constitute an Event of Default or a Default.

(d) Consents. The Lenders shall have received such Consents and other information, approvals, opinions or documents reasonably requested by the Agent or the Lenders in connection with such Borrowing.

(e) Available Commitment. After making the Loans requested on such Borrowing Date, (i) the aggregate outstanding principal amount of Revolving Credit Loans shall not exceed the aggregate amount of Revolving Credit Commitments, and (ii) the aggregate outstanding principal amount of Term Loans shall not exceed the aggregate amount of Term Loan Commitments, as applicable, then in effect.

(f) Use of Proceeds. The Borrower shall have confirmed in writing that the proceeds of such Borrowing shall be used only in accordance with the provisions of Section 2.5.

(g) No Material Adverse Effect. No Material Adverse Effect shall have occurred after giving effect to the making of such Loans.

Section 3.3 Conditions Subsequent. The Borrower shall satisfy the following conditions within the time periods set forth below:

(a) Financial Plan. No later than 90 days after the Closing Date, the Agent and Lenders shall have received the Financial Plan.

(b) Financial Covenants. No later than 90 days after the Closing Date, the Borrower and Lenders shall mutually agree upon financial covenants under Section 6.2.

(c) Cash Management Agreements. No later than 30 days after the Closing Date, the Borrower shall have established one or more Cash Management Accounts pursuant to a lockbox arrangement in accordance with Section 5.1(g).

#### ARTICLE IV Representations and Warranties

Section 4.1 Representations and Warranties. In order to induce the Agent and the Lenders to enter into this Agreement and to make each Borrowing to be made thereby, each Credit Party hereby represents and warrants to the Agent and each Lender, on the Closing Date and on each Borrowing Date as follows:

(a) Corporate Status; Corporate Authorization. The Borrower, each of its Subsidiaries and each other Credit Party is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization and is duly qualified and in good standing in every other jurisdiction where it is doing

business except where the failure to so qualify does not have a Material Adverse Effect on the Borrower or any to its Subsidiaries, and the execution, delivery and performance by the Borrower and its Subsidiaries and each other Credit Party of the Credit Documents (i) are within its respective authority, (ii) have been duly authorized, and (iii) do not conflict with or contravene their respective constitutive documents. The execution, delivery, performance of their respective obligations, and exercise of their respective rights under the Credit Documents by the Borrower, each of its Subsidiaries and each other Credit Party thereto, including, without limitation, the making of the Loans under this Agreement, (i) do not require any Consents that have not been obtained and (ii) are not and will not be in conflict with or prohibited or prevented by (A) any Regulation or (B) any corporate governance document, corporate minute or resolution or (C) any instrument, agreement or provision thereof, in each case binding on any of them or affecting any of their property.

(b) Execution and Binding Effect. Upon execution and delivery thereof, each Credit Document shall constitute the legal, valid and binding obligation of the Borrower, each of its Subsidiaries and each other Credit Party which is a party thereto, enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

(c) Properties.

(i) The Borrower, each of its Subsidiaries and each other Credit Party has good and marketable title to all material real property owned or purported to be owned by it, in each case free of all Liens other than the Permitted Liens.

(ii) The Borrower, each of its Subsidiaries and each other Credit Party is, or when leases creating Leasehold Properties are executed will be, lawfully possessed of a valid and subsisting leasehold estate in and to its Leasehold Properties which it purports to lease free and clear of all Liens other than the Permitted Liens.

(iii) The Borrower, each of its Subsidiaries and each other Credit Party enjoys, and will enjoy, peaceful and undisturbed possession of, or a license to use, all property (subject only to the Permitted Liens) that is necessary for their respective businesses.

(iv) Set forth on Schedule 4.1(c) is a list, as of the date hereof, of all real property held, or, to the Knowledge of the Borrower, planned to

be held, by the Borrower, each of its Subsidiaries and each other Credit Party, indicating in each case whether the respective property is (or is expected to be) owned or leased, the identity of the owner or lessee, the location of the respective property, the approximate value of such property, in the case of real property owned and, in the case of property not yet owned or leased, the estimated date of acquisition or leasing (if known to the Borrower on the date hereof).

(v) The Borrower, each of its Subsidiaries and each other Credit Party owns, or is licensed or otherwise has the right to use the Intellectual Property necessary to own and operate its properties and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others, except for such instances of non-compliance that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(d) [Reserved.]

(e) Laws. Each Credit Party is in material compliance with all laws, regulations, rulings, riders, injunctions, decrees, conditions or other requirements applicable or imposed upon such Credit Party by any law or by any Governmental Body.

(f) Litigation. Except as set forth on Schedule 4.1(f), there are no legal or other proceedings or investigations pending or threatened against the Borrower or any of its Subsidiary or any other Credit Party before any court, tribunal or regulatory authority which would, if adversely determined, alone or together, have a Material Adverse Effect on the Borrower, such Subsidiary or such other Credit Party.

(g) Governmental Approvals and Filings. No approval, order, consent, authorization, certificate, license, permit or validation of, or exemption or other action by, or filing, recording or registration with, or notice to, any Governmental Body (collectively, "Governmental Action") is or will be necessary in connection with the execution and delivery of this Agreement or any other Credit Document, consummation by the Credit Parties of the transactions herein or therein contemplated, or performance of or compliance with the terms and conditions hereof or thereof, other than the filings and recordations contemplated by the Collateral Documents. None of the Borrower, any of its Subsidiary or any other Credit Party is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act or the Investment Company Act of 1940 or to any federal or state statute or regulation limiting the Borrower's ability to incur Indebtedness for money borrowed. None

of the Borrower, any of its Subsidiaries or any other Credit Party is an “investment company” or a company “controlled” by an “investment company”, with the meaning of the Investment Company Act of 1940, as amended.

(h) Absence of Conflicts. The execution and delivery by each Credit Party of this Agreement and each other Credit Document to which it is a party and performance by it hereunder and thereunder will not violate any law (including, without limitation, Regulations T, U and X of the Federal Reserve Board) and will not conflict with or result in a breach of any order, writ, injunction, resolution, decree or other similar document or instrument of any court or Governmental Body or its certificate of incorporation or by-laws or similar constituent documents or create (with or without the giving of notice or lapse of time, or both) a default under or breach of any material agreement, bond, note or indenture, in each case to which it is a party (by successor in interest or otherwise), or by which it is bound or any material portion of its properties or assets is affected, or, except under the Collateral Documents, result in the imposition of any Lien (other than Permitted Liens) of any nature whatsoever upon any of the properties or assets owned by or used in connection with the business of the Borrower and its Subsidiaries.

(i) Collateral. From and after the execution and delivery of the Collateral Documents and the filing of the documents thereby required, the Agent, on behalf of the Lenders, shall have, subject only to Permitted Liens, a first-priority perfected security interest in and to all of the Collateral, free and clear of any Liens other than the Permitted Liens, and entitled to priority under applicable law, with no financing statements, chattel mortgages, real estate mortgages or similar filings on record anywhere other than such filings in connection with this Agreement, the Collateral Documents or the Permitted Liens. Each of the representations and warranties made by each Credit Party in each Collateral Document to which it is a party is true and correct in all material respects as of each date made or deemed made.

(j) Partnerships, Etc. None of the Borrower or any of its Subsidiaries is a partner (general or limited) of any partnership, is a party to any Joint Venture or owns (beneficially or of record) any equity or similar interest in any similar Person (including, without limitation, any interest pursuant to which the Borrower or any of its Subsidiaries has or may in any circumstance have an obligation to make capital contributions to, or be generally liable for or on account of the liabilities, acts or omissions of such other Person).

(k) Fiscal Year. Each fiscal year of the Borrower and each of its Subsidiaries begins on January 1 of each calendar year and ends on December 31 of each calendar year.

(l) Subsidiaries. Schedule 4.1(m) sets forth a true, correct and complete list, as of the Closing Date, of the Borrower and each of its Subsidiaries, showing as to each entity (i) the jurisdiction of its organization and jurisdictions in which it is qualified to do business, (ii) the number of shares of Capital Stock of each class (A) authorized and (B) issued and outstanding, (iii) the percentage of the outstanding shares of Capital Stock of the Borrower and each of its Subsidiaries owned directly or indirectly by the Borrower, (iv) the names of the record holders of each class of outstanding shares of Capital Stock of the Borrower and each of its Subsidiaries and the number of such shares held by each such holder, (v) the number of shares of Capital Stock of the Borrower and each of its Subsidiaries covered by all outstanding options, warrants, rights of conversion or purchase, and similar rights, (vi) the percentage of those options, warrants or rights owned directly or indirectly by the Borrower or such other Persons, and (vii) the names of the record holders of such options, warrants and rights and the number of such options, warrants and rights held by each such holder.

(m) Capitalization. All outstanding shares of Capital Stock of each Subsidiary of the Borrower are duly authorized, validly issued, fully paid and nonassessable and are free of any preemptive rights and, except as set forth on Schedule 4.1(m) and pursuant to the Collateral Documents, are owned, directly or indirectly, beneficially and of record by the Borrower free and clear of all Liens and any options, warrants and other rights.

(n) Material Misstatements and Omissions. There are no facts pertaining to the Borrower, any of its Subsidiaries or any other Credit Party, their assets or properties or their businesses which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect and which have not been disclosed in this Agreement. None of the representations or warranties of the Borrower, any of its Subsidiaries or any other Credit Party contained in the Credit Documents is untrue or incorrect in any material respect when made and on the Closing Date. To the Knowledge of the Borrower, there is no information, as of the Closing Date, which would contradict or is inconsistent in any material respect with any representation or warranty of the Borrower, any of its Subsidiaries or any other Credit Party contained in the Credit Documents.

(o) Solvency. The Borrower and each of its Subsidiaries is Solvent.

(p) Labor Practices. Neither the Borrower nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (i) no unfair labor practice complaint pending against the Borrower or any of its Subsidiaries or threatened against any of them before the National Labor Relations Board and no grievance or arbitration

proceeding arising out of or under any collective bargaining agreement that is so pending against the Borrower or any of its Subsidiaries or threatened against any of them, (ii) no strike or work stoppage in existence or threatened involving the Borrower or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect, and (iii) no union representation question existing with respect to the employees of the Borrower or any of its Subsidiaries, as the case may be, and no union organization activity that is taking place, except (with respect to any matter specified in clause (i), (ii) or (iii) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.

(q) Employee Benefits. The Borrower, each of its Subsidiaries and each of their ERISA Affiliates are in substantial compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan, except where the failure to perform such obligations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code is so qualified. No material liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any Trust established under Title IV of ERISA has been or is expected to be incurred by the Borrower or any of its Subsidiaries or any of their ERISA Affiliates, other than contributions required to be made to Employee Benefit Plans or Trusts. No ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates. As of the most recent valuation date for any Pension Plan, the amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed \$0 as of January 1, 2005. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of the Borrower, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA, does not exceed \$0. The Borrower, each of its Subsidiaries and each of their ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each



Multiemployer Plan and are not in material “default” (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan;

(f) Environmental Matters.

(i) Neither the Borrower nor any of its Subsidiaries has any Environmental Liabilities at any Relevant Property, which individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(ii) The Borrower and each of its Subsidiaries: (A) has operated its business in compliance with all applicable Environmental Laws; (B) has obtained all Environmental Permits required by applicable Environmental Laws for the ownership and operation of its properties, and all such Environmental Permits are in full force and effect or such Person has made all appropriate filings for issuance or renewal of such Environmental Permits; (C) is not aware of any acts, omissions, events or circumstances that may interfere with or prevent continued compliance with the Environmental Laws and Environmental Permits referred to in the preceding clauses (A) and (B); (D) has not received notice of any asserted or threatened claim, action, suit, proceeding, hearing, investigation or request for information relating to any environmental matter; and (E) has not received notice from any Governmental Body that the Borrower or any of its Subsidiaries is a potentially responsible party under any Environmental Law at any disposal site containing Hazardous Materials, nor received any notice that any lien under any Environmental Law against any property of the Borrower or any of its Subsidiaries exists, in the case of each of clauses (A) through (E).

(s) Insurance. The policies, binders or self-insurance programs for fire, liability, product liability, workmen’s compensation, vehicular and other insurance currently held by or on behalf of the Borrower and each of its Subsidiaries insure its material properties and business activities against such losses and risks as are adequate to protect its properties in accordance with customary industry practice when entered into or renewed. As of the date hereof, all such policies, binders and self-insurance programs are in full force and effect. None of the Borrower or any of its Subsidiaries has received notice from any insurer or agent of such insurer that substantial capital improvements or other expenditures are required. As of the date hereof, none of the Borrower or any of its Subsidiaries has received notice of cancellation of any material insurance policy or binder.

(t) Intellectual Property. The Borrower and each of its Subsidiaries

owns, or is licensed or otherwise has the right to use, all the patents, trademarks, service marks, names (trade, service, fictitious or otherwise), copyrights, technology (including, without limitation, computer programs and software), processes, data bases and other rights, free from burdensome restrictions, necessary to own and operate its properties and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights or otherwise, except for such instances of non-compliance that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(u) Absence of Events of Default. No event has occurred and is continuing and no condition exists which constitutes an Event of Default.

(v) Absence of Other Defaults. Except as disclosed on Part I of Schedule 4.1(v), none of the Borrower or any of its Subsidiaries is in default under any agreement, ordinance, resolution, decree, bond, note, indenture, order or judgment to which it is a party (by successor in interest or otherwise) or by which it is bound, or any other agreement or other instrument by which any of the properties or assets owned by it or used in the conduct of its business is affected, which individually or in the aggregate would have a Material Adverse Effect. The Borrower and each of its Subsidiaries has complied and is in compliance in all respects with all laws, except for such instances of non-compliance that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(w) Material Contracts. None of the Borrower or any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of the Material Contracts, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

(x) Brokerage Fees. No broker's or finder's fee or commission will be payable with respect to the execution and delivery of this Agreement and the other Credit Documents, and no other similar fees or commissions will be payable by the Credit Parties for any other services rendered to the Credit Parties ancillary to the credit transactions contemplated herein.

(y) Margin Regulations. No part of the proceeds of the Loans issued hereunder will be used for the purpose of buying or carrying any Margin Stock or to extend credit to others for the purpose of buying or carrying any Margin Stock, in either case in a manner which would violate or conflict with Regulations T, U

or X of the Board Governors of the Federal Reserve System. No Credit Party is engaged in the business of extending credit to others for the purpose of buying or carrying Margin Stock. Neither the making of the Loans nor any use of proceeds of any such Loans will violate or conflict with the provisions of Regulations T, U or X of the Board of Governors of the Federal Reserve System, as amended from time to time.

(z) Taxes. The Borrower and each of its Subsidiaries has filed all federal and other material Tax returns required to be filed by it and has not failed to pay any material taxes, or interest and penalties relating thereto, on or before the due dates thereof except for Taxes not yet due and except for those the amount or validity of which is currently being contested in good faith by appropriate proceedings. Except to the extent that reserves therefor are reflected in the Financials, (i) there are no material federal, state or local tax liabilities of the Borrower or any of its Subsidiaries due or to become due for any tax year ended on or prior to the date hereof relating to the Borrower or any of its Subsidiaries, which are not properly reflected in the consolidated financials of the Borrower, and (ii) there are no material claims pending, proposed or threatened against the Borrower or any of its Subsidiaries for past federal, state or local taxes, except those, if any, as to which proper reserves in accordance with GAAP are reflected in such Financials.

(aa) USA Patriot Act; Etc. Each Credit Party is in compliance in all material respects with the USA Patriot Act (Title III of Pub.L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”). No part of the proceeds of the extensions of credit hereunder will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the federal Foreign Corrupt Practices Act of 1977.

## ARTICLE V Affirmative Covenants

Section 5.1 Affirmative Covenants. Each Credit Party covenants and agrees that until payment in full of all Obligations, each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all the covenants in this Article V:

(a) Basic Reporting Requirements. The Borrower shall furnish to the Agent and the Lenders:

(i) as soon as available but in any event within ninety (90) days after the close of each Fiscal Year, the audited consolidated

Financials of the Borrower and its Subsidiaries for such Fiscal Year, certified by the Borrower's accountants;

(ii) as soon as available but in any event within sixty (60) days after the end of each Fiscal Quarter, the unaudited consolidated Financials of the Borrower and its Subsidiaries for such quarter, certified by its chief financial officer pursuant to a Financial Officer Certification;

(iii) as soon as available but in any event within thirty (30) Business Days after the end of each fiscal month the unaudited consolidated Financials of the Borrower and its Subsidiaries for such month, certified by its chief financial officer pursuant to a Financial Officer Certification;

(iv) together with the quarterly and annual audited consolidated Financials, a certificate of the Borrower setting forth computations demonstrating compliance with the financial covenants set forth in Section 6.2, and certifying that no Default or Event of Default has occurred, or if a Default or an Event of Default has occurred, the actions taken by the Borrower with respect thereto;

(v) not later than sixty (60) days prior to the end of each Fiscal Year an updated financial projection for the succeeding Fiscal Year; and

(vi) at any time and from time to time the Borrower or any Guarantor obtains an ownership interest in any New IP Collateral (as such term is defined in the Security Agreement) it shall deliver to Agent a written report, in reasonable detail, setting forth the New IP Collateral.

(b) Visitation; Verification. The Borrower, each of its Subsidiaries and each of the other Credit Parties shall keep true and accurate books of account in accordance with GAAP and shall permit the Agent and/or any Lender and or any of their designated representatives, upon reasonable notice and at the expense of the Borrower, to visit and inspect the premises of the Borrower, any of its Subsidiaries and/or other Credit Party, to examine the books of account of any such Persons and their Affiliates (and to make copies and/or extracts therefrom) and to discuss the affairs, finances and accounts of such Persons and their Affiliates with, and to be advised as to the same by, the officers of such Persons and to be advised as to such or other business records upon the request of the Agent and/or Lender.

(c) Maintenance of Properties. The Borrower, each of its Subsidiaries and each of the other Credit Parties shall maintain its corporate/legal existence

and business, maintain its assets in good operating conditions and repair (subject to ordinary wear and tear and casualty damage and to all provisions of this Agreement permitting sales of certain of Borrower's assets), keep its business and assets adequately insured, maintain its chief executive office in the United States, continue to engage in the same lines of business, and comply in all respects with all Regulations, including without limitation, ERISA and Environmental Laws, except where failures to do so, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(d) Notice of Material Events. The Borrower, each of its Subsidiaries and each of the other Credit Parties shall notify the Agent and the Lenders promptly in writing upon an Authorized Officer becoming aware of any of the following: (i) the occurrence of any Default or Event of Default, (ii) any noncompliance with ERISA or any Environmental Law or proceeding in respect thereof which could have a Material Adverse Effect, (iii) any change of address of the Borrower, any of its Subsidiaries or any other Credit Party, (iv) any threatened or pending litigation or similar proceeding affecting the Borrower, any of its Subsidiaries or any other Credit Party involving claims in excess of \$200,000 in the aggregate or any material change in any such litigation or proceeding previously reported, (v) claims in excess of \$200,000 in the aggregate against any assets or properties of the Borrower, any of its Subsidiaries or any other Credit Party encumbered in favor of the Agent and/or the Lenders and (vi) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

(e) Use of Proceeds. The Borrower, each of its Subsidiaries and each other Credit Party shall use the proceeds of the Loans only as permitted by Section 2.5 hereof (for the avoidance of doubt, the proceeds of the Loans shall not be used for the purpose of purchasing or carrying of "margin security" or "margin stock" within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224). The Borrower shall not transfer any of the proceeds of the Loans to, nor use any such proceeds for the benefit of, any of its Subsidiaries that is not a Guarantor hereunder.

(f) Further Assurances.

(i) The Borrower, each of its Subsidiaries and each of the other Credit Parties shall cooperate with the Agent, take such action, execute such documents, and provide such information as the Agent may from time to time reasonably request in order further to effect the transactions contemplated by and the purposes of the Credit Documents.

(ii) The Borrower, each of its Subsidiaries and each other Credit Party shall promptly, upon request by any Lender, correct, and cause each of the other parties to the Credit Document to promptly correct, any defect or error that may be discovered in any Credit Document or in the execution, acknowledgment or recordation of the Credit Document. Promptly upon request by the Agent or the Required Lenders, the Borrower, each of its Subsidiaries and each other Credit Party shall execute, authorize, acknowledge, deliver, record, file and register, any and all such further acts, deeds, conveyances, documents, security agreements, pledge agreements, mortgages, deeds of trust, trust deeds, assignments, financing statements and continuations, notices of assignment, transfers, certificates, assurances and other instruments as the Agent or the Required Lenders may require from time to time in order to carry out more effectively the purposes of each Credit Document. Without limiting the foregoing, the Borrower, each of its Subsidiaries and/or each other Credit Party shall (A) authorize the filing by Agent of UCC-1 financing statements for all jurisdictions requested by the Agent, and (B) take such action from time to time (including, without limitation, authorizing, filing, executing and/or delivering such assignments, security agreement and other instruments) as shall be reasonably requested by the Agent to create, in favor of the Lenders, to the extent required under the respective Collateral Documents and to the maximum extent permitted under applicable law, a first-priority perfected Lien in all of the Collateral, subject only to Permitted Liens.

(g) Account Control Agreements.

(i) On the Closing Date, the Borrower, each of its Subsidiaries and each other Credit Party shall enter into an account control agreement in form and substance acceptable to Agent as necessary to provide Agent with “control” over each deposit account of any Credit Party as provided for under Section 9-104 of Article 9 of the UCC for the purpose of perfecting the security interest that Agent has in such deposit account pursuant to the Collateral Documents; provided that, prior to the occurrence of an Event of Default and the acceleration of the Obligations hereunder, the Borrower, each of its Subsidiaries and each other Credit Party shall have complete discretion and control over all of their deposit accounts and all funds on deposit therein from time to time.

(ii) No later than 30 days after the Closing Date, the Borrower shall establish and maintain one or more accounts (each a “Cash Management Account”) pursuant to a lockbox arrangement acceptable to the Agent with a bank or banks as may be selected by the Borrower and

approved by the Agent. The Borrower shall issue to each such bank an irrevocable letter of instruction directing such bank to deposit all payments or other remittances received in the lockbox to the Cash Management Account maintained at such Bank. The Borrower shall instruct all of their Account Debtors to forward all items of payment to such lockboxes. In the event that the Borrower shall at any time receive any remittances of any of the foregoing directly or shall receive any other funds representing proceeds of the Collateral, the Borrower shall hold the same in trust for the benefit of the Agent and shall promptly deposit the same into a Cash Management Account.

(h) Insurance. The Borrower shall maintain and/or shall cause each of its Subsidiaries to maintain, at its respective expense, and keep in effect with responsible insurance companies, such liability insurance for bodily injury and third-party property damage as is customary in the case of companies engaged in the same or similar business or having similar properties, similarly situated. The Borrower shall, and shall cause each of its Subsidiaries to, keep and maintain, at its expense, its material real and personal property insured against loss or damage by fire, theft, explosion, spoilage and all other risks ordinarily insured against by other owners or users of such properties in similar businesses in an amount equal to the full replacement or cash value thereof, subject to deductible amounts which the Borrower, in its reasonable judgment, deems prudent.

(i) Information Regarding Collateral. The Borrower will furnish to the Agent prompt written notice of any change in (i) any Credit Party's corporate name or any trade name used to identify it in the conduct of its business or any Credit Party's chief executive office, its principal place of business or its jurisdiction of organization, (ii) any Credit Party's identity or corporate structure or (iii) any Credit Party's federal Taxpayer Identification Number. The Borrower will not effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC and all other actions have been taken that are required so that such change will not at any time adversely affect the validity, perfection or priority of any Lien established under any Credit Document on the Collateral.

(j) Existence; Conduct of Business. The Borrower will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits (including, without limitation, Environmental Permits) privileges, franchises, patent, copyrights, trademarks and trade names material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.1(g).

(k) Payment of Obligations. The Borrower will pay its Indebtedness and other obligations, including Tax liability, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and the enforcement of any Lien securing such obligation and (d) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

(l) Compliance with Laws. The Borrower will comply with all laws (including, without limitation, all Environmental Laws), rules, licenses, permits, Regulations and orders of any Governmental Body applicable to it or its property, except where failures to do so, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(m) Subsidiaries. If any Subsidiary is formed or acquired after the Closing Date, the Borrower will, within three Business Days after such Subsidiary is formed or acquired, notify the Agent and the Lenders thereof and cause any equity interest in or Indebtedness owned by or on behalf of any Credit Party to be added to the Collateral; provided that if such newly formed Subsidiary is a Foreign Subsidiary, the Borrower shall cause only 65% of the equity interests thereof to be added to the Collateral.

(n) Guarantors. As of the Closing Date, there are no Guarantors. The Borrower shall cause any Domestic Subsidiary formed after the date hereof (each, a "Guarantor") to become a Guarantor hereunder by (i) executing a joinder to this Agreement and (ii) executing a Guaranty. Upon delivery of any such joinder and such guaranty to Agent, notice of which is hereby waived by the parties hereto, each such Guarantor shall be as fully a party hereto as if such Guarantor were an original signatory hereof. Each Guarantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Guarantor hereunder, nor by any election of Agent not to cause any Subsidiary of the Borrower to become a Guarantor hereunder.

(o) Broker's Claims. The Borrower hereby indemnifies and agrees to hold each Lender and Agent harmless from and against any and all losses, liabilities, damages, costs and expenses which may be suffered or incurred by such Lender or Agent, as the case may be, in respect of any claim, suit, action or cause of action now or hereafter asserted by a broker or any Person acting in a similar capacity arising from or in connection with the execution and delivery of this Agreement or any other Credit Document or Hedge Agreements or the consummation of the transactions contemplated herein or therein. This Section



5.1(o) shall survive termination of this Agreement.

ARTICLE VI  
Negative Covenants/Financial Covenants

Section 6.1 Negative Covenants. Each Credit Party covenants and agrees that until all of the Obligations have been paid in full, each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.1:

(a) Indebtedness. None of the Borrower, any of its Subsidiaries or any other Credit Party shall create, incur, permit to exist or assume any Indebtedness other than (i) Indebtedness to the Agent and/or the Lenders arising under the Credit Documents, (ii) guarantee, indemnity, reimbursement and contribution agreements and similar agreements entered into in the ordinary course in connection with performance bonds issued for the account of the Borrower, (iii) Indebtedness of Credit Parties existing as of the Closing Date set forth on Schedule 6.1(a) hereto, (iv) Indebtedness in respect of the acquisition of property (including Capital Leases) the outstanding amount of which does not exceed \$350,000 in the aggregate, (v) Indebtedness in respect of taxes or other governmental charges contested in good faith by appropriate proceedings and for which the Borrower has made appropriate reserves or (vi) Indebtedness between or among the Borrower and its Subsidiaries (the Indebtedness described in the foregoing clauses (i) through (vi) of this paragraph, collectively, the “Permitted Indebtedness”).

(b) Liens. None of the Borrower, any of its Subsidiaries or any other Credit Party shall create or incur, or cause any of their Subsidiaries to create or incur, any Liens on any of the property or assets of such Person or any Subsidiaries of such Person, except (i) Liens securing the Obligations, (ii) Liens securing taxes or other governmental charges not yet due or due but contested in good faith by appropriate proceedings and for which the Borrower has made appropriate reserves (so long as the holder of any such Lien is not taking any active steps to enforce or foreclose on such Lien), (iii) deposits or pledges made in connection with social security obligations and deposits, pledges and other Liens to secure and support obligations arising under the agreements referred to in Section 6.1(a)(ii) hereof, (iv) Liens of landlords, carriers, warehousemen, mechanics and materialmen and other similar statutory Liens arising in the ordinary course of the Borrower’s business, less than 120 days old as to obligations not yet due or due but contested in good faith by appropriate proceedings and for which the Borrower has made appropriate reserves (so long as the holder of any such Lien is not taking any active steps to enforce or foreclose on such Lien), (v) easements, rights of way, zoning restrictions and similar minor Liens which individually and in the aggregate do not have a

material adverse effect on the Borrower and/or any of its Subsidiaries and (vi) the Liens listed on Schedule 6.1(b) (the liens described in the foregoing clauses (i) through (vi) of this paragraph, the “Permitted Liens”).

(c) Sales and Lease-Backs. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Credit Party (i) has sold or transferred or is to sell or to transfer to any other Person (other than the Borrower or any of its Subsidiaries), or (ii) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Credit Party to any Person (other than a Borrower or its Subsidiaries) in connection with such lease.

(d) Transactions with Shareholders and Affiliates. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service, but excluding the transactions contemplated by this Agreement) with any holder of 5% or more of any class of Capital Stock of the Borrower or any of its Subsidiaries or with any Affiliate of the Borrower, except (i) the payment to Patriarch Partners Management Group, LLC of management fees and (ii) those transactions that are (A) on terms no less favorable to the Borrower or such Subsidiary, as the case may be, than those that generally might be obtained at the time from a Person who is not such a holder or an Affiliate and (B) approved by the board of directors of the Borrower.

(e) Investments. None of the Borrower, any of its Subsidiaries or any other Credit Party shall make any Investments other than Investments in (i) marketable obligations of the United States maturing within one (1) year, (ii) certificates of deposit, bankers’ acceptances and time and demand deposits of United States banks having total assets in excess of \$1,000,000,000 or other similar cash equivalents, (iii) ownership by the Borrower or any of its existing Subsidiaries of the Capital Stock of their existing Subsidiaries, (iv) Indebtedness owing to the Borrower from any of its Subsidiaries, (v) existing Investments, (vi) agreements referred to in Sections 6.1(a)(ii) and 6.1(a)(vi) hereof, or (vii) such other Investments as the Agent may from time to time approve in writing. For the avoidance of doubt, the Borrower will be permitted to create new Domestic Subsidiaries so long as any such newly created Domestic Subsidiary becomes a Guarantor hereunder in accordance with Section 5.1(n).

(f) Certain Agreements. If the Borrower, any of its Subsidiaries or any other Credit Party shall create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than Permitted Liens, it

shall make or cause to be made effective provision whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by Lenders to the creation or assumption of any such Lien not otherwise permitted hereby. Except with respect to (i) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale and (ii) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided, that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be), none of the Borrower, any of its Subsidiaries or any other Credit Party shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

(g) Mergers; Asset Sales. None of the Borrower, any of its Subsidiaries or any other Credit Party shall (i) become party to a merger or consolidation, (ii) effect any disposition of assets other than in the ordinary course and except for other dispositions of assets with a value of up to \$100,000 per Fiscal Year, (iii) purchase, sell, lease or otherwise dispose of assets other than (A) in the ordinary course and (B) disposals of obsolete, worn out or surplus property, (iv) make any changes in the corporate structure or identity of the Borrower, its Subsidiaries or any other Credit Party which has a Material Adverse Effect on the Borrower and/or any of its Subsidiaries or (v) enter into any agreement to do any of the foregoing; provided, that, any Subsidiary of the Borrower may merge with and into the Borrower or any other Subsidiary of the Borrower upon not less than thirty (30) days' prior written notice to the Agent of such merger. For the avoidance of doubt, sales and other dispositions of assets which are either not prohibited by this Section 6.1(g) or expressly consented to by the Agent shall be deemed permitted sales of assets for all purposes of this Agreement, including, without limitation, Section 10.1(e)

(h) Fiscal Year. None of the Borrower, any of its Subsidiaries or any other Credit Party shall change its or any of its Subsidiaries fiscal year without the prior written consent of the Required Lenders.

(i) Restricted Payments. None of the Borrower, any of its Subsidiaries or any other Credit Party shall, directly or indirectly, declare, order, pay, make or set apart any sum for (i) any Restricted Junior Payment, (ii) Indebtedness owed to any Affiliate of a Credit Party; provided that so long as no Default or Event of Default has occurred, is continuing or would result therefrom,

the Borrower may make dividends and distributions to its members as contemplated by Section 3.03(c) of the Borrower Operating Agreement.

(j) Inactive Subsidiaries. No Inactive Subsidiary shall, and the Borrower shall not allow any Inactive Subsidiary to, (i) have any Indebtedness or other liabilities in an aggregate amount greater than \$100,000, (ii) own any assets or properties in an aggregate amount greater than \$100,000 or (iii) conduct any significant operations or business.

(k) Subsidiaries. None of the Borrower, any of its Subsidiaries or any other Credit Party shall form, or cause to be formed, any other Subsidiary, unless (i) all property and assets of such newly formed Subsidiary and (ii) all stock of any class of such newly formed Subsidiary, in each case, are pledged to the Agent for the benefit of the Agent and Lenders in accordance with the terms hereof and of the Collateral Documents.

(l) Conduct of Business. From and after the Closing Date, no Credit Party shall, nor shall permit any of its Subsidiaries to, engage in any business other than (i) the business engaged in by such Credit Party on the Closing Date and similar or related businesses, and (ii) such other lines of business as may be consented to by the Lenders.

Section 6.2 Financial Covenants. Within 30 days of the Closing Date, Borrower and Lenders shall mutually agree upon financial covenants applicable to Borrower.

## ARTICLE VII

### Increased Costs; Taxes; Indemnification; Set Off; Etc.

Section 7.1 Increased Costs; Capital Adequacy. In the event that any Lender shall have determined that the adoption, effectiveness, phase in or applicability after the Closing Date of any law, rule or Regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Body, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its applicable lending office) with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Body, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Commitments or other obligations hereunder with respect to the Loans to a level below that which such Lender or such controlling company could have achieved but for such adoption, effectiveness, phase in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling

corporation with regard to capital adequacy), then from time to time, within five (5) Business Days after receipt by the Borrower from such Lender of the statement referred to in the next sentence, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling, corporation on an after tax basis for such reduction. Such Lender shall deliver to the Borrower (with a copy to Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 7.1, which statement shall be conclusive and binding, upon all parties hereto absent manifest error.

Section 7.2 Taxes; Withholding, etc.

(a) Payments to Be Free and Clear. All sums payable by any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Lender) imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of any Credit Party or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment; provided, however, that the Borrower shall be under no obligation to increase the sum payable to any Lender not organized under the laws of the United States or a state thereof (a "Foreign Lender") by an amount equal to the amount of the United States Tax required to be withheld under United States law from the sums paid to such Foreign Lender, if such withholding is caused by the failure of such Foreign Lender to be engaged in the active conduct of a trade or business in the United States, or all amounts of interest and fees to be paid to such Foreign Lender hereunder are not effectively connected with such trade or business within the meaning of U.S. Treasury Regulation 1.1441-1(a) or such Foreign Lender fails to comply with Section 7.2(c).

(b) Withholding of Taxes. If any Credit Party or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by any Credit Party to Agent or any Lender under any of the Credit Documents: (i) the Borrower shall notify Agent of any such requirement or any change in any such requirement as soon as the Borrower becomes aware of it, (ii) Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on Agent or such Lender, as the case may be) on behalf of and in the name of Agent or such Lender, (iii) the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or

payment, Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made, and (iv) within 30 days after paying any sum from which it is required by law to make any deduction or withholding, and within 30 days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Borrower shall deliver to Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

(c) Foreign Lenders. Each Foreign Lender agrees that it will deliver to Borrower and Agent (i) two (2) duly completed copies of United States Internal Revenue Service Form W-8BEN or W-8ECI or other applicable United States Internal Revenue Service forms, or successor applicable form(s), as the case may be, together with any other certificate or statement of exemption required under the Internal Revenue Code or regulations issued thereunder. Each such Foreign Lender also agrees to deliver to Borrower and Agent two (2) further copies of said Form W-8BEN or W-8ECI or other applicable United States Internal Revenue Service forms, or successor applicable form(s) or other manner of certification, as the case may be, on or before the date that any such form expires or becomes obsolete or after the occurrence of any event requiring a change in the most recent form previously delivered by it to Borrower and Agent, and such extensions or renewals thereof as may reasonably be requested by the Borrower or Agent, unless in any such case an event (including, without limitation, any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Foreign Lender from duly completing and delivering any such form with respect to it and such Lender so advises Borrower and Agent. Such Foreign Lender shall certify in the case of a Form W-8BEN or W-8ECI or other applicable United States Internal Revenue Service forms that it is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes and that it is entitled to an exemption from United States backup withholding tax.

### Section 7.3 Indemnification.

(a) Indemnification by the Borrower. The Borrower and its Subsidiaries will indemnify and defend the Agent, the Lenders and each of their respective shareholders, partners, members, managers, directors, officers, employees, agents, attorneys and Affiliates (collectively, the “Indemnified Persons”) against and hold each Indemnified Person harmless from any and all liabilities, obligations, losses, damages, costs, expenses, claims, penalties, Actions, judgments, disbursements of any kind or nature whatsoever, interest, fines, cleanup costs, settlements, costs of preparation and investigation, costs

incurred in enforcing this indemnity and reasonable attorneys' fees and expenses (collectively, "Losses"), that the Indemnified Persons may incur, suffer, sustain or become subject to arising out of, relating to, or due to (i) any inaccuracy or breach of any of the representations and warranties of any Credit Party contained in any Credit Document or in any certificate delivered thereunder, (ii) the nonfulfillment or breach of any covenant, undertaking, agreement or other obligation of any Credit Party contained in any Credit Document or in any certificate delivered thereunder, (iii) any Environmental Liability, and/or (iv) any use of proceeds of any Loans; provided that such indemnity shall not, as to any Indemnified Person, be available to the extent such Losses arise out of the gross negligence or willful misconduct of such Indemnified Person. Upon request of an Indemnified Person, the Borrower shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person in connection with any Losses or threatened Losses and shall pay the reasonable fees and disbursements of such counsel. The Indemnified Person shall have the right to employ its own counsel at the expense of the Borrower if (i) the employment of counsel by the Indemnified Person at the Borrower's expense has been authorized in writing by Borrower, (ii) the Borrower has not in fact employed counsel to represent the Indemnified Person within a reasonable time after receiving notice of a request for the retention of counsel or (iii) both the Indemnified Person and Borrower are implicated with respect to the Losses or the threatened Losses, and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, in each of which cases the reasonable fees and expenses of counsel (including local counsel) will be at the expense of the Borrower, and all such fees and expenses will be reimbursed promptly as they are incurred.

(b) Contribution. If the indemnification provided for in this Section 7.3 is prohibited under applicable Regulations to an Indemnified Person, then the Borrower, in lieu of indemnifying the Indemnified Person, will contribute to the amount paid or payable by the Indemnified Person as a result of the Losses in such proportion as is appropriate to reflect the relative fault of Borrower, on the one hand, and of the Indemnified Person, on the other, in connection with the events or circumstances which resulted in the Losses as well as any other relevant equitable considerations.

Section 7.4 Right of Set Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender and Agent are hereby authorized by each Credit Party at any time or from time to time, without notice to any Credit Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts)

and any other Indebtedness at any time held or owing by such Lender or Agent to or for the credit or the account of any Credit Party against and on account of the Obligations of any Credit Party to such Lender or Agent hereunder, irrespective of whether or not (a) such Lender or Agent shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any other amounts due hereunder or the other Credit Documents shall have become due and payable and although such obligations and liabilities, or any of them, may be contingent or unmatured.

Section 7.5 Funding Breakage. In addition to the compensation required under Section 7.1, the Borrower agrees to pay all reasonable administrative fees charged by Lender and indemnify each Lender against any loss or expense (including loss of margin) which such Lender has incurred as a consequence of any payment or prepayment of any Loan on a day other than the last day of the corresponding Interest Period (whether or not such payment is mandatory or automatic and whether or not such payment or prepayment is then due).

If any Lender sustains or incurs any such loss or expense or if Lender has charged the Borrower for an administrative expense it shall from time to time promptly notify the Borrower and the Agent in writing setting forth in reasonably detail the amount determined in good faith by such Lender (such determination shall be conclusive absent manifest error) to be necessary to indemnify such Lender for such loss or expense and the amount of such administrative expense. Such amount shall be due and payable by the Borrower to the Agent for the account of such Lender, five Business Days after such notice is given.

## ARTICLE VIII Events of Default

Section 8.1 Events of Default. Any one or more of the following events which shall occur and be continuing shall constitute an “Event of Default”:

(a) Failure to Make Payments When Due. Failure by the Borrower to pay when due any installment of principal or, or interest on, the Loans, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise, or any fee or any other amount due hereunder, and such failure, except in respect of principal, is continuing two (2) Business Days after the date due therefor;

(b) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Section 2.5, Article V or Article VI and such failure is continuing and not waived by the Required Lenders ten (10) days after the date such term or condition should have been performed or complied with;



(c) Breach of Representations, Etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing, pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made;

(d) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other section of this Section 8.1, and such default shall not have been remedied or waived within 10 days after the earlier of (i) the date upon which an Authorized Officer of the Borrower had Knowledge of such default and (ii) the date upon which written notice thereof is given to the Borrower by the Agent or any Lender;

(e) Default in Other Agreements. (i) Failure of any Credit Party to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness in an individual principal amount of \$100,000 or more or with an aggregate principal amount of \$200,000 or more, in each case beyond the grace period, if any, provided therefor, or (ii) breach or default by any Credit Party with respect to any other material term of (A) one or more items of Indebtedness in the individual or aggregate principal amounts referred to in clause (i) above or (B) any loan agreement, mortgage, indenture or other agreement relating to such item of Indebtedness, in each case without cure or waiver within the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of such Indebtedness (or a trustee on behalf of such holder or holders), to cause, such Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be;

(f) Involuntary Bankruptcy, Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of the Borrower or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed, or any other similar relief shall be granted under any applicable federal or state law, or (ii) an involuntary case shall be commenced against the Borrower or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Borrower or any of its Subsidiaries, or over all or a substantial part of its property, shall have been

entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of the Borrower or any of its Subsidiaries for all or a substantial part of its property or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of the Borrower or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for 60 days without having been dismissed, bonded or discharged;

(g) Voluntary Bankruptcy, Appointment of Receiver, etc. (i) The Borrower or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or the Borrower or any of its Subsidiaries shall make any assignment for the benefit of creditors, or (ii) the Borrower or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of the Borrower or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f);

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of \$150,000 or (ii) in the aggregate at any time an amount in excess of \$300,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against the Borrower or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 30 days (or in any event later than 5 days prior to the date of any proposed sale thereunder);

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party decreeing, the dissolution or split up of the Borrower or any of its Subsidiaries and such order shall remain undischarged or unstayed for a period in excess of ten (10) days;

(j) Change of Control. A Change of Control shall occur;

(k) Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) this Agreement or any Credit

Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Agent shall not have or shall cease to have a valid and perfected first priority Lien, subject only to Permitted Liens, in any material portion of Collateral purported to be covered by the Collateral Documents or (ii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability under any Credit Document to which it is a party;

(l) Liens. At any time after the execution and delivery thereof, the Liens created by the Collateral Documents shall not constitute a valid and perfected Lien on the Collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required herein or therein) in favor of the Lenders, free and clear of all other Liens (other than Liens permitted under Section 6.1(b) or under the respective Collateral Documents), or, except for expiration in accordance with its terms, any of the Collateral Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by any Credit Party; or

(m) Condemnation or Forfeiture of Collateral. Any judicial process, condemnation or forfeiture proceedings is brought against any material item or portion of the Collateral or any rights therein shall be subject to such judicial process, condemnation or forfeiture proceedings.

Section 8.2 Remedies. Upon and after the occurrence of an Event of Default:

(a) Non Bankruptcy Related Defaults. In the case of any Event of Default specified in any Section other than Section 8.1(f) or 8.1(g), and after the expiration of any applicable grace periods, the Agent may, and at the request of the Required Lenders shall, by notice to the Borrower from time to time do any or all of the following: (i) declare the Commitments terminated, whereupon the Commitments will terminate and (ii) declare the unpaid principal amount of the Loans and interest accrued thereon and all other Obligations to be immediately due and payable, which shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and an action therefor shall immediately accrue.

(b) Bankruptcy Events of Default. In the case of any of the Events of Default specified in either Section 8.1(f) or 8.1(g), automatically, without any notice to the Borrower or any other act by the Agent or any Lender, automatically, (i) the Commitments shall thereupon terminate, and (ii) each of the following shall immediately become due and payable without presentment,

demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, (A) the unpaid principal amount of and interest on the Loans and (B) all other Obligations.

(c) Remedies in All Events of Default. The Agent shall, at the request of or with the consent of the Required Lenders, (i) exercise all rights and remedies provided in the Credit Documents, (ii) exercise any right of counterclaim, setoff, banker's lien or otherwise which it may have with respect to money or property of the Borrower, (iii) bring any lawsuit, action or other proceeding permitted by law for the specific performance of, or injunction against any violation of, any Credit Document and may exercise any power granted under or to recover judgment under any Credit Document, (iv) enforce any and all Liens and security interests created pursuant to the Credit Documents, and (v) exercise any other right or remedy permitted by applicable Regulations.

(d) Lenders' Remedies. Unless otherwise directed by the Required Lenders, in case any one or more of the Events of Default shall have occurred and be continuing, and whether or not the Lenders shall have accelerated the maturity of the Loans pursuant to Section 8.2, the Required Lenders, if owed any amounts with respect to the Loans, may proceed to protect and enforce their rights by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Credit Agreement and the other Credit Documents or any instrument pursuant to which the Obligations to the Lenders are evidenced, including as permitted by applicable law the obtaining of the ex parte appointment of a receiver, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the such Lenders, but subject to the provisions of Section 9.9(b). No remedy herein conferred upon any Lender or the Agent or the holder of any Note is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

## ARTICLE IX The Agent

Section 9.1 Appointment of Agent. PPAS is hereby appointed Agent hereunder, and each Lender hereby authorizes the Agent to act as its agent in accordance with the terms hereof and the other Credit Documents. The Agent hereby agrees to act upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Article IX are solely for the benefit of the Agent and the Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, the Agent

shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for the Borrower or any of its Subsidiaries. The Agent without consent of or notice to any party hereto, may assign any and all of its rights or obligations hereunder to any of its Affiliates.

Section 9.2 Powers and Duties. Each Lender irrevocably authorizes the Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to the Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. The Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. The Agent may execute any of its duties under this Agreement and the other Credit Documents by or through agents or attorneys in fact, or may assign such duties to its wholly owned nominee without the consent of the Lenders, and shall be entitled to rely on advice of counsel concerning all matters pertaining to such duties. The Agent shall not have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon the Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

Section 9.3 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Credit Document by or through third parties, agents, employees or attorneys in fact (any such entity, a "Sub Agent") or may assign such duties to its wholly owned nominee without the consent of the Lenders, and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any Sub-Agent that it selects as long as such selection was made with reasonable care. The Borrower and each Lender hereby agree that any Sub Agent appointed hereunder shall be entitled to the benefit of the provisions of Sections 7.3, 9.2, 9.4, 9.5, 9.6, 9.7, 9.9, 9.10 and 9.11 of this Agreement as if such Sub Agent is a party to this Agreement.

Section 9.4 General Immunity.

(a) No Responsibility for Certain Matters. The Agent shall not be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by the Agent to any Lender or by or on behalf of any Credit Party to the Agent or any Lender in connection with the Credit Documents and the

transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, nor shall the Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default. Anything contained herein to the contrary notwithstanding, Agent shall not have any liability arising from confirmations of the amount of outstanding Loans.

(b) Exculpatory Provisions. None of the Agent or any of its officers, trustees, partners, members, directors, employees, attorneys or agents shall be liable to Lenders for any action taken or omitted by the Agent under or in connection with any of the Credit Documents except to the extent caused by the Agent's gross negligence or willful misconduct. The Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until the Agent shall have received instructions in respect thereof from the Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.1) and, upon receipt of such instructions from the Required Lenders (or such other Lenders, as the case may be), the Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) the Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for the Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it, and (ii) no Lender shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of the Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.1). The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Credit Document which involves discretionary decision making absent express written instructions from the Required Lenders with respect thereto.

Section 9.5 Agent Entitled to Act with Borrower. The Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of banking, trust, financial advisory or other business with the Borrower or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other

consideration from the Borrower for services in connection herewith and otherwise without having to account for the same to Lenders.

Section 9.6 Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of the Borrower and its Subsidiaries in connection with Borrowings hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of the Borrower and its Subsidiaries. The Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and the Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement and funding or holding any of its Loans and accepting its Commitments on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by the Agent or Lenders, as applicable on the Closing Date.

Section 9.7 Right to Indemnity. Each Lender, in proportion to its Pro Rata Share, severally (and not jointly) agrees to indemnify the Agent and its stockholders, directors, officers, employees, agents, attorneys and Affiliates (each an "Indemnified Agent Person"), to the extent that the Agent shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnified Agent Person in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as the Agent in any way relating to or arising out hereof or in connection with the Credit Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's gross negligence or willful misconduct. If any indemnity furnished to the Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, the Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, further, in no event shall this sentence require any Lender to indemnify the Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof, and provided, further, this sentence shall not be deemed to

require any Lender to indemnify the Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

Section 9.8 Successor Agent.

(a) The Agent may resign at any time by giving not less than ten (10) Business Days prior written notice thereof to the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Agent, which shall be (i) one of the Lenders or an Affiliate of one of the Lenders or (ii) a Person who would be an eligible successor agent if appointed by the resigning Agent under Section 9.8(b).

(b) If no successor Agent shall have been so appointed by the Lenders within ten (10) Business Days after the resigning Agent's giving of notice of resignation, then the resigning Agent may appoint, on behalf of the Borrower and the Lenders, a successor Agent, which shall be a commercial bank organized under the laws of the United States of America or of any state thereof and having a combined capital and surplus of at least \$250,000,000. In the event that the Agent is unable to appoint a replacement successor within ten (10) Business Days after it is entitled to do so after using reasonable efforts, the Agent may nonetheless resign by delivering a written resignation to the Lenders and the Borrower, provided that in such circumstances, and unless and until a successor Agent is appointed, the Agent shall remain Agent solely for the purpose of serving as secured party of record with respect to the Collateral, its sole duty in that capacity shall be to take such ministerial actions as it shall be directed to take by the Lenders (including, without limitation, the execution and delivery of documents or instruments relating to the Collateral), and the Agent shall be entitled to reimbursement from the Borrower for its out of pocket costs and expenses and reasonable compensation from the Borrower for its services. If the Agent has resigned and no successor Agent has been appointed, subject to the preceding sentence, the Lenders shall perform the duties of the Agent hereunder, and the Borrower shall make all payments in respect of the Obligations to the applicable Lender and shall deal directly with the Lenders.

(c) No successor Agent shall be deemed to be appointed hereunder until such successor Agent has accepted the appointment in writing. Upon the acceptance of any appointment as Agent hereunder by a successor Agent and upon the execution and filing of such financing statements, or amendments thereto, and such other instruments and notices, as may be necessary or desirable or as the Required Lenders may request, in order to continue the perfection of the Liens granted or purported to be granted under the Collateral Documents, such successor Agent shall succeed to and become vested with all the rights, powers,



discretion, privileges and duties of the resigning Agent, and the resignation or termination of the Agent shall then be effective for all purposes. Upon the effectiveness of the resignation or termination of the Agent, the resigning Agent shall be discharged from its duties and obligations under the Credit Documents. After the effectiveness of the resignation or termination of an Agent, the provisions of Section 7.3, Section 10.3 and this Article IX shall inure to the former Agent's benefit as to any actions taken or omitted to be taken by it while it was acting as the Agent under this Agreement.

Section 9.9 Collateral Documents.

(a) Agent as Agent under Collateral Documents. Each Lender hereby further authorizes Agent, on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to the Collateral and the Collateral Documents. Subject to Section 10.1, without further written consent or authorization from Lenders, Agent may execute any documents or instruments necessary to release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which Lenders have otherwise consented in the manner provided herein.

(b) Agent's Right to Realize on Collateral. Anything contained in any of the Credit Documents to the contrary notwithstanding the Borrower, Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Agent, on behalf of Lenders in accordance with the terms hereof, and (ii) in the event of a foreclosure by Agent on any of the Collateral pursuant to a public or private sale, Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Agent at such sale.

Section 9.10 Notice of Default. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Agent has received notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Agent receives such a notice, the Agent shall give notice thereof to the Lenders. The Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Lenders; provided that

unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

Section 9.11 Delivery of Documents, Notices , Etc. In addition to, and in furtherance of any requirement placed upon the Agent herein to deliver, provide, distribute, notify or otherwise convey items received from the Borrower to the Lenders, the Agent shall promptly notify Lenders of any notices, documents, requests, demands or other items Agent received from Borrower and promptly deliver or convey, to the extent they are in written form, such notices, documents, requests, demands or items to the Lenders.

## ARTICLE X Miscellaneous

### Section 10.1 Amendments and Waivers; Release of Collateral.

(a) General. Subject to Section 10.1(b) and Section 10.1(c) below, no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall be effective without the written consent of the Required Lenders.

(b) Other Consent. Notwithstanding the provisions of Section 10.1(a) above, no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall amend, modify, terminate or waive any provision of Article IX as the same applies to the Agent, or any other provision hereof as the same applies to the rights or obligations of the Agent, in each case without the consent of the Agent.

(c) Prior Unanimous Written Consent. Without the prior unanimous written consent of the affected Lenders,

(i) no amendment, consent or waiver shall (A) affect the amount or extend the time of the obligation of any Lender to make Loans or (B) extend the originally scheduled time or times of repayment of the principal of the Loans or (C) alter the time or times of payment of interest on any Loan or of any fees payable for the account of the Lenders or (D) alter the amount of the principal of the Loans or the rate of interest thereon or (E) alter the amount of any fee payable hereunder of the account of the Lenders or (F) permit any subordination of the principal of or interest on the Loans or (G) permit the subordination of the Lien created by the Collateral Documents in any of the Collateral,

(ii) no Collateral, other than in connection with any Asset Sale made in accordance with the terms hereof or as otherwise specifically permitted in this Agreement or the Collateral Documents, shall be released from the Lien of the Collateral Documents; and

(iii) none of the provisions of this Section 10.1(c) shall be amended.

(d) Effect of Notices, Waivers or Consents. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.1 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

(e) Certain Collateral Releases. The Borrower is entitled to receive, and the Agent is authorized to effect, the release of Collateral that is the subject of an Asset Sale or any other sale made in accordance with the terms hereof or as otherwise specifically permitted in this Agreement or the Collateral Documents from the Lien of the Collateral Documents.

Section 10.2 Notices. All notices, requests, demands and other communications to any party or given under any Credit Document (collectively, the “Notices”) will be in writing and delivered personally, by overnight courier or by registered mail to the parties at the following address or sent by facsimile, with confirmation received, to the facsimile number specified below (or at such other address or telecopy number as will be specified by a party by like notice given at least five calendar days prior thereto):

(a) If to the Borrower, at:

American LaFrance, LLC  
1090 Newton Way  
Summerville, South Carolina 29483  
Attention: Michael Fey  
Telephone: (843) 486-7401  
Facsimile: (843) 486-7500

(b) If to the Agent, at:

Patriarch Partners Agency Services, LLC  
227 West Trade Street, Suite 1400  
Charlotte, North Carolina 28202  
Attention: Loan Administration/American LaFrance  
Telephone: (704) 227 1200  
Facsimile: (704) 375 0358

with a copy to:

Gardere Wynne Sewell LLP  
1601 Elm Street, Suite 3000  
Dallas, TX 75201  
Attention: Steven S. Camp  
Telephone: (214) 999 4354  
Facsimile: (212) 999 3354

(c) If to the Lenders, to the address for such Lender set forth on the signature pages hereto.

All Notices will be deemed delivered when actually received. Each of the parties will hereafter notify the other in accordance with this Section of any change of address or telecopy number to which notice is required to be mailed.

Section 10.3 Expenses. Whether or not the transactions contemplated hereby shall be consummated or any Loans shall be made, the Borrower agrees to pay promptly:

(a) all the actual and reasonable costs and expenses of preparation of the Credit Documents and any consents, amendments, waivers or other modifications thereto; the reasonable fees, expenses and disbursements of counsel to Lenders and Agent in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, supplements, waivers or other modifications thereto and any other documents or matters requested by the Borrower;

(b) all the actual costs and reasonable expenses of creating and perfecting Liens in favor of Agent, for the benefit of Lenders and Agent, pursuant hereto, including, without limitation, filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to Agent and Lenders;

(c) all the actual costs and reasonable fees, expenses and disbursements of any auditors, accountants, consultants or appraisers;

(d) all the actual costs and reasonable expenses (including, without limitation, the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Agent and its counsel) in connection with the inspection, verification, custody or preservation of any of the Collateral, to the extent required or permitted hereunder;

(e) after the occurrence of a Default or an Event of Default, all costs and expenses, including, without limitation, reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by any Agent or Lenders in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of any guaranty) or in connection with any negotiations, reviews, refinancing or restructuring of the credit arrangements provided hereunder, including without limitation in the nature of a "work out" or pursuant to any insolvency or bankruptcy cases or proceedings; and

(f) the foregoing shall not be in addition to, and shall not be construed to limit, any other provisions of the Credit Documents regarding costs and expenses to be paid by the Borrower.

#### Section 10.4 Enforceability; Successors and Assigns.

(a) Enforceability; Successors and Assigns. This Agreement will be binding upon and inure to the benefit of and is enforceable by the respective successors and permitted assigns of the parties hereto. This Agreement may not be assigned by the Borrower hereto without the prior written consent of the Agent and each Lender. Any assignment or attempted assignment in contravention of this Section will be void ab initio and will not relieve the assigning party of any obligation under this Agreement.

(b) Assignments. Each Lender may assign (each, an "Assignment") to one or more Eligible Assignees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of such Lender's Loans, Commitments and Notes, as the case may be). Such Assignment may be made without the consent of the Borrower but shall require the consent of the Agent. In connection with any such Assignment, the assigning Lender and the Assignee shall execute and deliver to the Agent an Assignment Agreement, acceptable to Agent in its sole discretion (each, an "Assignment Agreement"), and a \$3,500.00 fee (the "Assignment Fee") payable to Agent. Upon its receipt of a duly executed and completed Assignment Agreement, Agent shall record the information contained in such Assignment Agreement in the Register, shall give

prompt notice thereof to the Borrower and shall maintain a copy of such Assignment Agreement in its Principal Office. From and after the effective date of an Assignment, the Assignee shall be a party hereto and, to the extent of the interest assigned pursuant to the Assignment, have the rights and obligations of a lender under this Agreement, and the assigning Lender shall, to the extent of the interest assigned, be released from its obligations under this Agreement. The Borrower hereby consents to the disclosure of any information obtained by Lender in connection with this Agreement to any Person to which Lender sells, or proposes to sell, its Loans, Commitment or Notes provided any such Person shall agree to keep any such information confidential.

(c) Participations. Each Lender may sell participations (each, a “Participation”) to one or more Persons (each, a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of such Lender’s Loans, Commitment and Notes, as the case may be); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the Borrower for the performance of such obligations, and (iii) the Borrower shall continue to deal solely and directly with the Lender and Agent in connection with the Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which the Lender sells such a participation shall provide that the Lender shall retain the sole right to enforce the Credit Documents and to approve any amendment, modification or waiver of any provision of the Credit Documents. The Borrower hereby consents to the disclosure of any information obtained by a Lender in connection with this Agreement and/or any other Credit Agreement to any Person to which such Lender participates, or proposes to participate, its Loans, Commitments or Notes.

(d) Notwithstanding anything else to the contrary contained herein, any Lender may any time pledge its Loans and such Lender’s rights under this Agreement and the other Credit Documents to a Federal Reserve Bank and, in the case of any Lender that is a fund, to its trustee for the benefit of its investors; provided, that no such pledge to a Federal Reserve Bank (or in the case of any Lender that is a fund, to its trustee for the benefit of its investors) shall release such Lender from such Lender’s obligations hereunder or under any other Credit Document.

Section 10.5 Lenders’ Obligations Several: Independent Nature of Lenders’ Rights. The obligation of each Lender hereunder is several and not joint and neither Agent nor any Lender shall be responsible for the obligation of any other Lender hereunder. Nothing contained in any Credit Document and no action taken by Agent or any Lender pursuant hereto or thereto shall be deemed to constitute Lenders to be a partnership, an association, a joint venture or any other kind of entity. The amounts

payable at any time hereunder to each Lender shall be a separate and independent debt, and, provided the Agent fails or refuses to exercise any independent debt, and, provided the Agent fails or refuses to exercise any remedies against Borrower after receiving the direction of the Lenders, each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 10.6 Integration. This Agreement and the other Credit Documents contain and constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior negotiations, agreements and understandings, whether written or oral, of the parties hereto.

Section 10.7 No Waiver; Remedies. No failure or delay by any party in exercising any right, power or privilege under this Agreement or any of the other Credit Documents will operate as a waiver of the right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of the right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies provided in the Credit Documents will be cumulative and not exclusive of any rights or remedies provided by law.

Section 10.8 Submission to Jurisdiction. Each of the Borrower, the other Credit Parties, the Agent and the Lenders hereby (a) agrees that any Action with respect to any Credit Document may be brought only in the New York State courts sitting in New York County or the federal courts of the United States of America for the Southern District of New York and sitting in New York County, (b) accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of such courts, (c) irrevocably waives any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any Action in those jurisdictions, and (d) irrevocably consents to the service of process of any of the courts referred to above in any Action by the mailing of copies of the process to the parties hereto as provided in Section 10.2. Service effected as provided in this manner will become effective ten (10) calendar days after the mailing of the process.

Section 10.9 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement.

Section 10.10 Governing Law. This Agreement and the other Credit Documents, and all claims, disputes and matters arising hereunder or thereunder or related hereto or thereto, will be governed by, and construed in accordance with, the laws of the state of New York applicable to contracts executed in and to be performed entirely within that state, without reference to conflicts of laws provisions.

Section 10.11 Waiver of Jury. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTIES WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.12 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 10.13 Survival. All representations, warranties, covenants, agreements, and conditions contained in or made pursuant to this Agreement or the other Credit Documents shall survive (a) the making of the Loans and the payment of the Obligations and (b) the performance, observance and compliance with the covenants, terms and conditions, express or implied, of all Credit Documents, until the due and punctual (i) indefeasible payment of the Obligations and (ii) performance, observance and compliance with the covenants, terms and conditions, express or implied, of this Agreement and all of the other Credit Documents; provided, however, that the provisions of Article VII, Section 9.6 and Section 10.3 shall survive (i) indefeasible payment of the Obligations and (ii) performance, observance and compliance with the covenants, terms and conditions, express or implied, of this Agreement and all of the other Credit Documents.



Section 10.14 Maximum Lawful Interest.

(a) Notwithstanding anything to the contrary contained in this Agreement or any other Credit Document, no interest rate specified in this Agreement or any other Credit Document shall at any time exceed the Maximum Rate. If at any time the interest rate otherwise (but for the terms and provisions of this Section 10.14) contracted for in this Agreement or any other Credit Document (the “Contract Rate”) for any Obligation shall exceed the Maximum Rate, then any subsequent reduction in the Contract Rate for such Obligation shall not reduce the rate of interest on such Obligation below the Maximum Rate until the aggregate amount of interest accrued on such Obligation equals the aggregate amount of interest which would have accrued on such Obligation if the Contract Rate for such Obligation had at all time been in effect.

(b) Notwithstanding anything to the contrary contained in this Agreement or any other Credit Document, none of the terms and provisions of this Agreement or any other Credit Document shall ever be construed to create a contract or obligation to pay interest at a rate in excess of the Maximum Rate; and neither the Agent nor any Lender shall ever charge, receive, take, collect, reserve or apply, as interest on the Obligations, any amount in excess of the Maximum Rate. The parties hereto agree that any interest, charge, fee, expense or other obligation provided for in this Agreement or in the other Credit Documents which constitutes interest under applicable law shall be, ipso facto and under any and all circumstances, limited or reduced to an amount equal to the lesser of (i) the amount of such interest, charge, fee, expense or other obligation that would be payable in the absence of this Section 10.14(b) or (ii) an amount which, when added to all other interest payable under this Agreement and the other Credit Documents, equal the Maximum Rate. If, notwithstanding the foregoing, the Agent or any Lender ever contracts for, charges, receives, takes, collects, reserves or applies as interest any amount in excess of the Maximum Rate, such amount which would be deemed excessive interest shall be deemed a partial payment or prepayment of principal of the Obligations and treated hereunder as such; and if the Obligations, or applicable portions thereof, are paid in full, any remaining excess shall promptly be paid to the Borrowers or other appropriate Credit Party. In determining whether the interest paid or payable, under any specific contingency, exceeds the Maximum Rate, the Borrowers, the Agent and the Lenders shall, to the maximum extent permitted by law, (a) characterize any nonprincipal payment as an expense, fee or premium rather than as interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the entire contemplated term of the Obligations, or applicable portions thereof, so that the interest rate does not exceed the Maximum Rate at any time during the term of the Obligations; provided that, if the unpaid principal balance

is paid and performed in full prior to the end of the full contemplated term thereof, and if the interest received for the actual period of existence thereof exceeds the Maximum Rate, the Agent and/or the Lenders, as appropriate, shall refund to the Borrowers or other appropriate Credit Party the amount of such excess and, in such event, the Agent and the Lenders shall not be subject to any penalties provided for by any laws for contracting for, charging, receiving, taking, collecting, reserving or applying interest in excess of the Maximum Rate.

Section 10.15 Interpretation. As used in this Agreement, references to the singular will include the plural and vice versa and references to the masculine gender will include the feminine and neuter genders and vice versa, as appropriate. Unless otherwise expressly provided in this Agreement (a) the words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement and (b) article, section, subsection, schedule and exhibit references are references with respect to this Agreement unless otherwise specified. Unless the context otherwise requires, the term “including” will mean “including, without limitation.” The headings in this Agreement and in the Schedules are included for convenience of reference only and will not affect in any way the meaning or interpretation of this Agreement.

Section 10.16 Ambiguities. This Agreement and the other Credit Documents were negotiated between legal counsel for the parties and any ambiguity in this Agreement or the other Credit Documents shall not be construed against the party who drafted this Agreement or such other Credit Documents.

Section 10.17 Amendment and Restatement. THIS AGREEMENT IS EXECUTED AND DELIVERED BY THE BORROWER TO AMEND AND RESTATE IN ITS ENTIRETY THE ORIGINAL CREDIT AGREEMENT AS PROVIDED FOR IN THE RECITALS. FURTHER, THE AGREES THAT THIS AGREEMENT SHALL IN NO WAY AFFECT OR IMPAIR THE LIENS AND/OR SECURITY INTERESTS OF THE COLLATERAL AND OTHER LOAN DOCUMENTS SECURING REPAYMENT OF THE OBLIGATIONS, WHICH LIENS AND/OR SECURITY INTERESTS THE BORROWER ACKNOWLEDGES TO BE VALID AND SUBSISTING, AND THE BORROWER SPECIFICALLY AGREES THAT THE LIENS SECURING THE EXISTING OBLIGATIONS SHALL NOT IN ANY MANNER BE RELEASED OR WAIVED BUT SHALL INSTEAD BE AND REMAIN IN FULL FORCE AND EFFECT TO SECURE REPAYMENT OF THE OBLIGATIONS. Except as expressly modified and superseded by this Agreement, the other Credit Documents are ratified and confirmed and continue in full force and effect. The Credit Documents, as modified by this Agreement, continue to be legal, valid, binding and enforceable in accordance with their respective terms. Without limiting the generality of the foregoing, the Borrower hereby ratifies and confirms that all Liens heretofore granted to Agent were intended to, do and continue to secure the full payment and performance of the Obligations. The

Borrower agrees to perform such acts and duly authorize, execute, acknowledge, deliver, file and record such additional assignments, security agreements, modifications or agreements to any of the foregoing, and such other agreements, documents and instruments as Agent may reasonably request in order to perfect and protect those liens and preserve and protect the rights of Agent in respect of all present and future Collateral. The terms, conditions and provisions of the other Credit Documents (as the same may have been amended, modified or restated from time to time) are incorporated herein by reference, the same as if stated verbatim herein. From and after the Closing Date, any reference to the Original Credit Agreement in any of the other Credit Documents shall mean this Agreement.

[Remainder of page intentionally left blank; signatures on following pages.]

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

BORROWER:

AMERICAN LAFRANCE, LLC

By: \_\_\_\_\_

Name:

Title: President and Chief Executive  
Officer

AGENT:

PATRIARCH PARTNERS AGENCY  
SERVICES, LLC, as Agent

By: \_\_\_\_\_  
Name: Lynn Tilton  
Title: Manager

LENDERS:

Address for Notices:

Patriarch Partners Agency Services, LLC  
227 West Trade Street, Suite 1400  
Summerville, South Carolina 29483

**SCHEDULE 2.1**  
**COMMITMENTS AND LOANS**

Term Loan Commitments

Lender	Term Loan Commitment
<b>Total</b>	<b>[\$000,000,000]</b>

Revolving Credit Commitments

Lender	Revolving Credit Commitment
<b>Total</b>	<b>[\$00,000,000]</b>