
DEBTOR IN POSSESSION FINANCING AGREEMENT

AMONG

THE CIT GROUP/BUSINESS CREDIT, INC.

(AS AGENT)

THE LENDERS THAT ARE PARTIES HERETO

AND

ASARCO LLC

(AS BORROWER)

DATED: OCTOBER __, 2005

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DEBTOR IN POSSESSION FINANCING AGREEMENT

THE CIT GROUP/BUSINESS CREDIT, INC., a New York corporation (“CIT”) with offices located at 5420 LBJ Freeway, Suite 200, Dallas, Texas 75240 (CIT and any other entity becoming a Lender hereunder pursuant to Section 3.8(d) or Section 12.4(b) of this Financing Agreement are collectively referred to as the “Lenders” and individually as a “Lender”), and CIT, as the Agent for the Lenders (the “Agent”), are pleased to confirm the terms and conditions under which the Lenders, acting through the Agent, shall make revolving loans and other financial accommodations to ASARCO LLC, a Delaware limited liability company (the “Company”), with a principal place of business at 1150 N. 7th Avenue, Tucson, Arizona 85705.

ARTICLE 1 **DEFINITIONS**

Section 1.1 Defined Terms. As used in this Financing Agreement:

Acceptable Plan shall mean a Reorganization Plan which provides for full payment of all Obligations on the effective date of such Reorganization Plan and provides for an effective date no later than 180 days after the date of entry of the Confirmation Order, or which is otherwise acceptable to the Agent and the Required Lenders.

Accounts shall mean any and all of the Company’s present and future: (a) accounts (as defined in the UCC); (b) instruments, documents, chattel paper (including electronic chattel paper) (all as defined in the UCC); (c) unpaid seller’s or lessor’s rights (including rescission, replevin, reclamation, repossession and stoppage in transit) relating to the foregoing or arising therefrom; (d) rights to any goods represented by any of the foregoing, including rights to returned, reclaimed or repossessed goods; (e) reserves and credit balances arising in connection with or pursuant to this Financing Agreement; (f) guaranties, other supporting obligations, payment intangibles and letter of credit rights (all as defined in the UCC); (g) insurance policies or rights relating to any of the foregoing; (h) general intangibles pertaining to any of the foregoing (including rights to payment, including those arising in connection with bank and non-bank credit cards), and all books and records and any electronic media and software relating thereto; (i) notes, deposits or other property of the Company’s account debtors securing the obligations owed by such account debtors to the Company; and (j) all Proceeds of any of the foregoing; provided that Accounts will not include any Excluded Collateral.

Affiliate shall mean any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, the Company (or other Person, if required by the context). A Person shall be deemed to control another Person if such controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

Agent’s Bank Account shall mean any account designated by Agent as such.

AMC Note shall mean that certain Promissory Note dated as of March 31, 2003, made by Americas Mining Corporation in favor of Southern Peru Holdings Corporation, in an original principal amount of \$123,250,000.

Applicable Margin shall mean 1.00% for Chase Bank Rate Loans and 2.50% for LIBOR Loans; provided that in connection with any increase in the Total Commitment pursuant to Section 3.8, which may be required for the successful syndication of the Revolving Line of Credit to CIT's desired hold level, as contemplated by Section 2.2(a), the Agent may, by notice to the Company, increase the Applicable Margin for Chase Bank Rate Loans to not more than 1.75% and increase the Applicable Margin for LIBOR Loans to not more than 3.25%.

Appraised Value shall mean (a) with respect to any Operating Real Estate, an appraisal of the fair market value of such Operating Real Estate prepared by an independent appraiser selected by the Agent having experience in appraising similar property in the general area of such Operating Real Estate, (b) with respect to any Equipment, an appraisal of the net orderly liquidation value of such Equipment prepared by an independent appraiser selected by the Agent having experience in appraising similar equipment, (c) with respect to the Silver Bell Equity Interest, an appraisal of the fair market value of the Silver Bell Equity Interest prepared by an independent appraiser selected by the Agent having experience in appraising similar interests. Such appraisals shall take into account all information relevant to the purpose of the property being appraised and customarily taken into account in appraisals of such nature, and shall be based on the assumption that the property being appraised is free of all liens and security interests; provided that the Appraised Value of any particular Operating Real Estate or Equipment or the Silver Bell Equity Interest, as determined by the most recent appraisal obtained by the Agent in accordance herewith, may be reduced from time to time by the Agent's estimation, as it may determine in its reasonable discretion, of (i) the amount of any liabilities not taken into account in such appraisal and which are or become secured by liens affecting such Operating Real Estate, such Equipment or the Silver Bell Equity Interest, as applicable (including any Permitted Encumbrances), (ii) the amount of any other liabilities not taken into account in such appraisal, whether fixed, contingent or otherwise, encumbering or otherwise burdening the Company's ownership interest in such Operating Real Estate, such Equipment or the Silver Bell Equity Interest, and (iii) such other amounts as the Agent may deem appropriate in its reasonable business judgment.

Assignment and Transfer Agreement shall mean the Assignment and Transfer Agreement in the form of Exhibit A attached hereto.

Availability Reserve shall mean an amount equal to the sum, without duplication, of:

- (a) a general reserve of \$10,000,000; plus
- (b) any reserve which the Agent may establish from time to time pursuant to the express terms of this Financing Agreement; plus
- (c) a reserve in the amount by which the Carve-Out exceeds \$2,000,000; plus
- (d) such other reserves against Net Availability as the Agent deems necessary in the exercise of its reasonable business judgment as a result of (i) negative forecasts and/or trends in

the Company's business, industry, prospects, profits, operations or financial condition (ii) other issues, circumstances or facts that could otherwise negatively and materially impact the Company or its business, prospects, profits, operations, industry, financial condition or assets, or (iii) the inclusion of the Supplemental Asset Component Borrowing Base Amount in the Borrowing Base.

Avoidance Claim shall mean any claim that could be asserted by or on behalf of the Company or its estate against a Person under any of 11 U.S.C. Sections 544, 546, 547, 548, 549, 550 or 553.

Borrowing Base shall mean, at any time:

(a) the lesser of (i) \$75,000,000 or (ii) the sum of (A) 85% of the Company's outstanding Eligible Accounts Receivable, plus (B) the lesser of seventy percent (70%) of the Gross Metal Value of the Eligible Inventory – Anode, or ninety percent (90%) of the Net Orderly Liquidation Value of the Eligible Inventory – Anode, plus (C) the lesser of seventy percent (70%) of the Gross Metal Value of the Eligible Inventory – Concentrate, or ninety percent (90%) of the Net Orderly Liquidation Value of the Eligible Inventory – Concentrate, plus (D) the lesser of seventy percent (70%) of the Gross Metal Value of the Eligible Inventory – Finished Goods, or ninety percent (90%) of the Net Orderly Liquidation Value of the Eligible Inventory – Finished Goods, plus (E) the lesser of seventy percent (70%) of the Gross Metal Value of the Eligible Inventory – Reverts, or ninety percent (90%) of the Net Orderly Liquidation Value of Eligible Inventory – Reverts, but in any event not to exceed the amount that is the lesser of (i) for the first 90 days following the Closing Date, \$20,000,000 or forty percent (40%) of the sum of clauses (B), (C), (D), (E) and (F), (ii) for the next 30 days, \$17,000,000 or thirty percent (30%) of the sum of clauses (B), (C), (D), (E) and (F), and (iii) at all times thereafter, \$15,000,000 or twenty percent (20%) of the sum of clauses (B), (C), (D), (E) and (F), plus (F) the lesser of seventy percent (70%) of the Gross Metal Value of Eligible Inventory – Precious Metals, or ninety percent (90%) of the Net Orderly Liquidation Value of Eligible Inventory – Precious Metals; plus

(b) subsequent to the date of entry of the Court's final (as opposed to interim) Financing Order and prior to the Commitment Increase Effective Date, the sum of \$35,000,000, and at all times thereafter the Supplemental Asset Component Borrowing Base Amount; less

(c) the amount of the Availability Reserve in effect at such time.

Budget shall mean a thirteen (13) week cash expense budget detailing the Company's anticipated cash receipts and expenditures (other than expenditures made by the Company from funds not required by the terms of this Financing Agreement to be on deposit in a Depository Account) including Professional Expenses, as amended or supplemented from time to time with the Agent's prior written consent, which budget (and any amendments or supplements thereto) shall be in form and substance acceptable to the Agent.

Business Day shall mean any day on which the Agent and JPMorgan Chase Bank, N.A. are open for business.

Capital Expenditures shall mean, for any period, the aggregate expenditures of the Company during such period on account of property, plant, equipment or similar fixed assets that, in conformity with GAAP, are required to be reflected on the balance sheet of the Company, but excluding expenditures for restoration, repair or replacement of any fixed or capital asset that was damaged or destroyed, in whole or in part, to the extent of any insurance Proceeds payable in connection with such damage or destruction.

Capital Lease shall mean any lease of property (whether real, personal or mixed) which, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of the Company, but excluding expenditures for restoration, repair or replacement of any fixed or capital asset that was damaged or destroyed, in whole or in part, to the extent of any insurance proceeds payable in connection with such damage or destruction.

Carve-Out shall have the meaning given to it in the Financing Order and subject to the limitations set forth therein.

Casualty Proceeds shall mean (a) payments or other proceeds from an insurance carrier with respect to any loss, casualty or damage to Collateral, and (b) payments received on account of any condemnation or other governmental taking of any of the Collateral.

Chapter 11 Case shall mean the case filed by the Company under Chapter 11 of the Bankruptcy Code which is pending in the Court and known as Case No. 05-21207.

Chase Bank Rate shall mean the rate of interest per annum announced by JPMorgan Chase Bank, N.A. (or its successor) from time to time as its “prime rate” in effect at its principal office in New York City. (The prime rate is not intended to be the lowest rate of interest charged by JPMorgan Chase Bank, N.A. to its borrowers).

Chase Bank Rate Loans shall mean any loans or advances made pursuant to this Financing Agreement that bear interest based upon the Chase Bank Rate.

CIT’s System shall mean the Agent’s StuckeyNet or other internet-based loan accounting and reporting system.

Claims shall mean any and all claims, demands, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, awards, remedial response costs, expenses or disbursements of any kind or nature whatsoever (including reasonable attorneys’, accountants’, consultants’ or paralegals’ fees and expenses), whether arising under or in connection with the DIP Financing Documents, any applicable law, or otherwise, that may now or hereafter be suffered or incurred by a Person and whether suffered or incurred in or as a result of any investigation, litigation, arbitration or judicial or non-judicial proceeding, or any appeal related thereto.

Closing Date shall mean the date on which this Financing Agreement is executed by the Company, the Agent and the Lenders that initially are parties hereto, and delivered to the Agent.

Collateral shall mean, collectively, all present and future Accounts, Equipment, Inventory and other Goods, Documents of Title, General Intangibles, Investment Property, Real Estate and Other Collateral; provided that Collateral shall not include any Excluded Collateral.

Collateral Consultant shall mean Behre Dolbear & Company, Inc. or any successor thereto selected by the Agent to serve as the Agent's collateral consultant.

Commitment shall mean, as to each Lender, the amount of the commitment for such Lender set forth on Schedule 3 to this Financing Agreement or in the Assignment and Transfer Agreement to which such Lender is a party, as such amount may be reduced or increased in accordance with the provisions of Section 12.4(b) or any other applicable provision of this Financing Agreement.

Commitment Increase Agreement shall mean a Commitment Increase Agreement entered into by any Lender with the Agent and the Company in accordance with Section 3.8 of this Financing Agreement in a form approved by the Agent.

Commitment Increase Amount shall mean the amount by which the Total Commitment exceeds \$75,000,000.

Commitment Increase Effective Date shall mean the date upon which all of conditions precedent set forth in Section 2.2 shall have been satisfied, as determined by the Agent in its sole discretion, or waived by the Agent.

Commitment Letter shall mean the Commitment Letter dated September 14, 2005, issued by the Agent to, and accepted by, the Company.

Company Balance Sheet shall mean a balance sheet for the Company only prepared in accordance with GAAP (subject to normal year-end audit adjustments in the case of any balance sheet other than the year-end balance sheet).

Confidential Information shall have the meaning provided for in Section 12.7 of this Agreement.

Confirmation Order shall mean an order entered by the Court confirming a Reorganization Plan.

Consolidated Balance Sheet shall mean a consolidated balance sheet for the Company and its subsidiaries, eliminating all inter company transactions and prepared in accordance with GAAP (subject to normal year-end audit adjustments in the case of any balance sheet other than the year-end balance sheet).

Copyrights shall mean all present and hereafter acquired copyrights, copyright registrations, recordings, applications, designs, styles, licenses, marks, prints and labels bearing any of the foregoing, all reissues and renewals thereof, all licenses thereof, all other general intangible, intellectual property and other rights pertaining to any of the foregoing, together with the goodwill associated therewith, and all income, royalties and other Proceeds of any of the foregoing.

Court shall mean the United States Bankruptcy Court for the Southern District of Texas Corpus Christi Division.

Default shall mean any event specified in Section 9.1 hereof, regardless of whether any requirement for the giving of notice, the lapse of time, or both, or any other condition, event or act, has occurred or been satisfied.

Default Rate of Interest shall mean a rate of interest equal to the lesser of (i) the Maximum Rate and (ii) two percent (2%) per annum greater than the interest rate accruing on the Obligations pursuant to Section 7.1 hereof.

Depository Account shall mean each bank account (and the related lockbox, if any) subject to the Agent's control that is established by the Agent or the Company pursuant to Section 2.1(j) or Section 3.2(c) of this Financing Agreement.

Depository Account Control Agreement shall mean a three-party agreement in form and substance satisfactory to the Agent among the Agent, the Company and the bank which will maintain a Depository Account, (a) which provides the Agent with control of such Depository Account and provides for the transfer of funds in a manner consistent with the provisions of Section 3.2(b) of this Financing Agreement, and (b) pursuant to which such bank agrees that, except as otherwise provided in the Depository Account Control Agreement, such bank has no lien upon, or right of set off against, the Depository Account and any cash, checks, wires and other items from time to time on deposit therein.

Dilution Percentage shall mean, with respect to the Company during any period of measurement, the quotient (expressed as a percentage) obtained by dividing (a) the aggregate amount of the Company's non-cash reductions against Trade Accounts Receivable, during such period, by (b) the aggregate amount of the Company's gross sales during such period, as determined by the Agent in the exercise of its reasonable business judgment. The Dilution Percentage shall be determined by the Agent based on its reviews of the periodic financial and collateral reports submitted by the Company to the Agent as well as the results of the periodic field examinations of the Company conducted by the Agent from time to time. The period of measurement for calculating the Dilution Percentage shall be determined by the Agent from time to time in the exercise of its reasonable business judgment.

DIP Facility shall mean the senior secured revolving line of credit facility established by the Lenders in favor of the Company under Article 3 of this Financing Agreement, which shall be in the initial maximum amount of \$75,000,000 and is subject to being increased to an amount not to exceed \$150,000,000.

DIP Financing Documents shall mean this Financing Agreement, the Promissory Notes, mortgages and deeds of trust on any Real Estate, the other closing documents executed by the Company or any subsidiary thereof, and any other ancillary loan and security agreements executed by the Company or any subsidiary thereof from time to time in connection with this Financing Agreement, all as may be renewed, amended, restated or supplemented from time to time.

Documents of Title shall mean all present and future documents (as defined in the UCC), all warehouse receipts, bills of lading, shipping documents, chattel paper, instruments and

similar documents, all whether negotiable or non-negotiable, together with all Inventory and other Goods relating thereto, and all Proceeds of any of the foregoing.

Electronic Transmission shall have the meaning given to such term in Section 6.2(g) of this Financing Agreement.

Eligible Accounts Receivable shall mean the gross amount of the Company's Trade Accounts Receivable that are subject to a valid, exclusive, first priority and fully perfected security interest in favor of the Agent, for the benefit of the Lenders, which conform to the warranties contained herein and which, at all times, continue to be acceptable to the Agent in the exercise of its reasonable business judgment, less, without duplication, the sum of:

(a) actual returns, discounts, claims, credits and allowances of any nature (whether issued, owing, granted, claimed or outstanding), plus

(b) reserves for Trade Accounts Receivable that arise from, or are subject to or consist of: (i) sales to the United States of America, any state or other governmental entity or to any agency, department or division thereof, except for any such sales as to which the Company has complied with the Assignment of Claims Act of 1940 or any other applicable statute, rules or regulation to the Agent's satisfaction in the exercise of its reasonable business judgment; (ii) foreign sales, other than sales which otherwise comply with all of the other criteria for eligibility hereunder and are (x) secured by letters of credit (in form and substance reasonably satisfactory to the Agent) issued or confirmed by, and payable at, banks acceptable to the Agent having a place of business in the United States of America and provided that either (A) the issuers of such letters of credit have consented to the assignment of the proceeds thereof to the Agent for the benefit of the Lenders pursuant to an agreement in form and substance satisfactory to the Agent, or (B) the issuers of such letters of credit have named the Agent, for the benefit of the Lenders, as the transferee beneficiary of such letter of credit, or (y) to customers residing in Canada, provided that such Accounts are payable in United States Dollars; (iii) Accounts that remain unpaid more than the earlier of ninety (90) days from invoice date or sixty (60) days from due date; (iv) contra accounts; (v) sales to any subsidiary (direct or indirect) or parent (direct or indirect) of the Company, or to any Affiliate of the Company or any Affiliate of any shareholder, subsidiary (direct or indirect) or parent (direct or indirect) of the Company; (vi) bill and hold (deferred shipment) or consignment sales; (vii) sales to any customer which is either (w) insolvent, (x) the debtor in any bankruptcy, insolvency, arrangement, reorganization, receivership or similar proceedings under any federal or state law, (y) negotiating, or has called a meeting of its creditors for purposes of negotiating, a compromise of its debts, or (z) financially unacceptable to the Agent or has a credit rating unacceptable to the Agent; (viii) all sales to any customer if fifty percent (50%) or more of the aggregate dollar amount of all outstanding invoices to such customer are unpaid more than the earlier of ninety (90) days from invoice date or sixty (60) days from due date; (ix) prior to and for 45 days following cessation of the Work Stoppage, sales to the Company's top five customers to the extent the aggregate outstanding amount of such sales at any time exceeds seventy percent (70%) of all Eligible Accounts Receivable at such time and further to the extent that the aggregate outstanding amount of sales to any one of such customers exceeds fifty percent (50%) of all Eligible Accounts Receivable at such time, and after 45 days following cessation of the Work Stoppage, sales to any customer and/or its Affiliates to the extent the aggregate outstanding amount of such sales at any time

exceeds, twenty five percent (25%) or more of all Eligible Accounts Receivable at such time; (x) pre-billed receivables and receivables arising from progress billings; and (xi) sales not payable in United States currency; plus

(c) reserves established by the Agent to account for increases in the Company's Dilution Percentage above 5%, and such other reserves against Trade Accounts Receivable as the Agent deems necessary in the exercise of its reasonable business judgment and which are customary either in the commercial finance industry or in the lending practices of the Agent or the Lenders.

The Agent shall promptly give the Company notice of any reserves described in the foregoing clauses (b) and (c).

Eligible Equipment means all Equipment owned by the Company for which each of the following statements is accurate and complete with respect to such item of Equipment:

- (a) the Company holds good and marketable title to the Equipment;
- (b) the full purchase price for the Equipment has been paid in cash by the Company;
- (c) the Agent, on behalf of the Lenders, has a first priority perfected security interest in the Equipment securing the Obligations;
- (d) the Equipment is not subject to any lien or security interest other than Permitted Encumbrances;
- (e) the Agent has received an appraisal report satisfactory to the Agent with respect to the Equipment from an independent appraiser satisfactory to the Agent setting forth the net orderly liquidation value thereof;
- (f) the Equipment is in the possession of the Company and located (i) on Real Estate owned or leased by the Company and (ii) within the United States; provided, that, if such Equipment is located on Real Estate leased by the Company, the landlord of such Real Estate shall have executed a landlord lien waiver;
- (g) the Equipment is not subject to any agreement which would restrict the Agent's ability to sell or otherwise dispose of such Equipment;
- (h) the Equipment is in good repair and working order and is used by the Company in the ordinary course of its business; and
- (i) the Equipment does not constitute "fixtures" under the applicable laws of the jurisdiction in which the Equipment is located.

Eligible Inventory shall mean the gross amount of the Company's, Eligible Inventory-Anode, Eligible Inventory-Concentrate, Eligible Inventory-Finished Goods, Eligible Inventory – Reverts, Eligible Inventory – Precious Metals that is subject to a valid, exclusive, first priority and fully perfected security interest in favor of the Agent, for the benefit of the Lenders, and

which conforms to the warranties contained herein and which, at all times continues to be acceptable to the Agent in the exercise of its reasonable business judgment, less, without duplication, (a) all unprocessed ore, (b) all supplies, (c) all Inventory not present in the United States of America, (d) all Inventory returned or rejected by the Company's customers (other than goods that are undamaged and resalable in the normal course of business) and goods to be returned to the Company's suppliers, (e) all Inventory in transit unless such Inventory is in transit between Company locations in the ordinary course of business and title thereto remains in the Company, (f) all Inventory not in transit but in the possession of a warehouseman, bailee, third party processor, or other third party, unless such warehouseman, bailee or third party has executed a notice of security interest agreement (in form and substance reasonably satisfactory to the Agent), and (g) the amount of such other reserves against Inventory as the Agent deems necessary in the exercise of its reasonable business judgment, including, without limitation, reserves for special order, licensed or private label goods, discontinued, slow-moving and obsolete Inventory, market value declines, bill and hold (deferred shipment), consignment sales, shrinkage and any applicable customs, freight, duties and Taxes.

Eligible Inventory-Anode shall mean the Company's Inventory consisting of copper with a purity of at least 99.0% but less than 99.9% as evidenced by an assay report reasonably acceptable to the Collateral Consultant.

Eligible Inventory-Concentrate shall mean the Company's Inventory consisting of smelter feedstocks with a copper content of at least 25.0% but less than 99.0% pure as evidenced by an assay report reasonably acceptable to the Collateral Consultant.

Eligible Inventory-Finished Goods shall mean the Company's Inventory consisting of copper in the form of "rod", "cake", "cathode" or "starter sheet" with a purity of at least 99.9% as evidenced by an assay report reasonably acceptable to the Collateral Consultant.

Eligible Inventory – Precious Metals shall mean the Company's Inventory consisting of (1) gold and silver contained in Eligible Inventory-Concentrate, Eligible Inventory-Anode or anodic slimes and other byproducts of the copper refining process and (2) pure gold and pure silver that is in stand alone form, in each case as evidenced by an assay report reasonably acceptable to the Collateral Consultant.

Eligible Inventory-Reverts shall mean the Company's Inventory consisting of cold smelter byproducts with a copper content of at least 50% but less than 99% as evidenced by an assay report reasonably acceptable to the Collateral Consultant.

Eligible Real Estate means, at any time, all Operating Real Estate owned by the Company and located in the United States for which each of the following statements is accurate and complete:

(a) the Company holds good and indefeasible fee simple title to the Operating Real Estate;

(b) the Operating Real Estate is described on Schedule 1.1(C), the Company has executed and delivered to the Agent a real estate mortgage or deed of trust with respect to such

Operating Real Estate, and the Agent has a first priority perfected lien in such Operating Real Estate securing the Obligations;

(c) the Operating Real Estate is not subject to any lien or security interest, except for Permitted Encumbrances;

(d) the Agent has received a title report or title commitment covering the Operating Real Estate in form and substance satisfactory to the Agent;

(e) the Agent has received an appraisal report satisfactory to the Agent with respect to the Operating Real Estate setting forth the Appraised Value of the Operating Real Estate; and

(f) the Agent has received an environmental site assessment with respect to the Operating Real Estate and other reports of environmental professionals, in such form and prepared by such environmental professionals as the Agent shall require, none of which shall reflect the existence of any environmental conditions or actual or potential environmental liabilities which are material to such Operating Real Estate or the Company.

Equipment shall mean all present and hereafter acquired equipment (as defined in the UCC) including, without limitation, all machinery, equipment, rolling stock, furnishings and fixtures, and all additions, substitutions and replacements thereof, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto and all Proceeds of any of the foregoing.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

Eurocurrency Reserve Requirements shall mean for any day, as applied to a LIBOR Loan, the aggregate (without duplication) of the maximum rates of reserve requirement (expressed as a decimal fraction) in effect with respect to the Agent or any Lender on such day, including, without limitation, basic, supplemental, marginal and emergency reserves under Regulation D or any other applicable regulations of the Board of Governors of the Federal Reserve System or other governmental authority having jurisdiction with respect thereto, as now and from time to time in effect, dealing with reserve requirements prescribed for Eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of such Board) maintained by the Agent or any Lender (such rates to be adjusted to the nearest one-sixteenth of one percent (1/16 of 1%) or, if there is not a nearest one-sixteenth of one percent (1/16 of 1%), to the next higher one sixteenth of one percent (1/16 of 1%)).

Event(s) of Default shall have the meaning given to such term in Section 9.1 of this Financing Agreement.

Excluded Collateral shall mean (a) the KWELM insurance proceeds currently held in an escrow account at Wells Fargo Bank, National Association, pursuant to that certain Escrow Agreement dated July 8, 2005, among the Company, Capco Pipe Company, Inc., Lac d'Amiante du Quebec, Ltd., and the Official Committee of Unsecured Creditors (the "**Subsidiary Debtors' Committee**") in the affiliated Chapter 11 cases of Lac d'Amiante du Quebec, Ltd. and Capco Pipe Company, Inc., et al. (the "**Subsidiary Debtors' Cases**"), (b) any other insurance payment

or insurance proceeds arising from or payable as a result of asbestos-based personal injury claims for which the Company or its subsidiaries have liability, (c) the Company's right, title, or interest in the claims or causes of action against certain persons that have been described or arise from facts alleged in those certain motions (and exhibits thereto) in Adversary Proceeding No. 05-2048 under Docket Numbers 8 and 10 by the Subsidiary Debtors' Committee and/or by the Future Claims Representative in the Subsidiary Debtors' Cases, whether the same be prosecuted in that pending adversary proceeding or in any other proceeding, (d) any right of indemnification or contribution of the Company to collect from entities, if any, that are liable to the Company on a claim of a creditor against the Company if the claim arises as a consequence of a payment that is made to a personal injury claimant on account of any asbestos-related liability other than entities that owe an Account to the Company or are critical vendors to the Company, (e) notes receivable of the Company received in connection with sales of business divisions which notes receivable have been issued to the Company for the sole purpose of paying costs for environmental remediation or asbestos claims associated with the business division sold and Proceeds thereof, (f) any Excluded Inventory and Proceeds thereof, (g) any and all Proceeds of the AMC Note (whether principal, interest or otherwise) received by the Company until such time as the Company has performed all of its payment obligations to the Coeur d'Alene Tribe pursuant to the settlement agreement dated January 31, 2003 between it and the Company, and (h) any Avoidance Claims.

Excluded Inventory shall mean Inventory owned by any Person and provided to the Company pursuant to tolling agreements or arrangements with the Company as listed on Schedule 1.1(D), as such Schedule may be amended or supplemented from time to time by notice hereunder from the Company to the Agent.

Financing Agreement shall mean this Debtor In Possession Financing Agreement, as amended from time to time, together with all Exhibits and Schedules hereto.

Financing Order shall mean any interim or final order which is entered by the Court pursuant to Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001(c), which is in form and substance satisfactory to the Agent in all respects, and which authorizes the incurrence by the Company of secured and superpriority indebtedness under the DIP Facility in accordance with the DIP Financing Documents.

GAAP shall mean generally accepted accounting principles as in effect from time to time in the United States of America and for the period as to which such accounting principles are to apply.

General Intangibles shall mean all present and hereafter acquired general intangibles (as defined in the UCC), and shall include, without limitation, all present and future right, title and interest in and to: (a) all Trademarks, (b) Patents, utility models, industrial models, and designs, (c) Copyrights, (d) trade secrets, (e) licenses, permits and franchises, (f) any other forms of intellectual property, (g) all customer lists, distribution agreements, supply agreements, blueprints, indemnification rights and tax refunds, (h) all monies and claims for monies now or hereafter due and payable in connection with the foregoing, including, without limitation, payments for infringement and royalties arising from any licensing agreement between the

Company and any licensee of any of the Company's General Intangibles, and (i) all Proceeds of any of the foregoing.

Goods shall mean all present and hereafter acquired "Goods", as defined in the UCC, and all Proceeds thereof.

Gross Metal Value shall mean, at any time, the value derived by multiplying the number of pounds of copper, or number of ounces of precious metals, as the case may be, of the category of Inventory in question by the current Market Price.

Indebtedness shall mean, without duplication, all liabilities, contingent or otherwise, which are either (a) obligations in respect of borrowed money or for the deferred purchase price of property, services or assets, other than Inventory, or (b) obligations with respect to Capital Leases.

Indemnified Party shall have the meaning given to such term in Section 9.5 of this Financing Agreement.

Interest Period shall mean, subject to availability: (a) with respect to an initial request by the Company for a LIBOR Loan or the conversion of a Chase Bank Rate Loan to a LIBOR Loan, at the option of the Company a one-month, two-month or three-month period commencing on the borrowing or conversion date with respect to such LIBOR Loan and ending one month, two months or three months thereafter, as applicable; and (b) with respect to any continuation of a LIBOR Loan, at the option of the Company a one-month, two-month or three-month period commencing on the last day of the immediately preceding Interest Period applicable to such LIBOR Loan and ending one month, two months or three months thereafter, as applicable; provided that (i) if any Interest Period would otherwise end on a day which is not a Working Day, such Interest Period shall be extended to the next succeeding Working Day, and (ii) if any Interest Period begins on a day for which there is no numerically corresponding day in the month in which such Interest Period would otherwise end, such Interest Period shall end on the last Working Day of the month in which such Interest Period would otherwise end.

Inventory shall mean all present and hereafter acquired inventory (as defined in the UCC) including, without limitation, all merchandise and inventory in all stages of production (from raw materials through work in process to finished goods), and all additions, substitutions and replacements thereof, wherever located, together with all goods and materials used or usable in manufacturing, processing, packaging or shipping of the foregoing, and all Proceeds of any of the foregoing.

Investment Property shall mean all present and hereafter acquired "Investment Property", as defined in the UCC, together with all stock and other equity interests in the Company's subsidiaries, and all Proceeds thereof.

Issuing Bank shall mean any bank issuing a Letter of Credit for the Company.

Letters of Credit shall mean all letters of credit issued for or on behalf of the Company with the assistance of the Lenders (acting through the Agent) by an Issuing Bank in accordance with Article 4 hereof.

Letter of Credit Guaranty shall mean any guaranty or similar agreement delivered by the Agent, on behalf of the Lenders, to an Issuing Bank of the Company's reimbursement obligation under such Issuing Bank's reimbursement agreement, application for letter of credit or other like document.

Letter of Credit Guaranty Fee shall mean the fee that the Agent, for the benefit of the Lenders, may charge the Company under Section 7.3(a) of this Financing Agreement for issuing a Letter of Credit Guaranty or otherwise assisting the Company in obtaining Letters of Credit.

Letter of Credit Sub-Line shall mean \$50,000,000.

LIBOR shall mean, for any Interest Period and subject to availability, a rate of interest equal to the quotient obtained by dividing: (a) at the Agent's election, (i) LIBOR for such Interest Period as quoted to the Agent by JPMorgan Chase Bank, N.A. (or any successor thereof) two (2) Business Days prior to the first day of such Interest Period, or (ii) the rate of interest determined by the Agent at which deposits in U.S. Dollars are offered for such Interest Period as presented on Telerate Systems at page 3750 as of 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period (provided that if two or more offered rates are presented on Telerate System at page 3750 for such Interest Period, the arithmetic mean of all such rates, as determined by the Agent, will be the rate elected); by (b) a number equal to 1.00 minus the Eurocurrency Reserve Requirements, if any, in effect on the day which is two (2) Business Days prior to the beginning of such Interest Period.

LIBOR Interest Payment Date shall mean, (a) with respect to any LIBOR Loan having an Interest Period of one (1) month, the last day of the Interest Period for such LIBOR Loan or, (b) with respect to any LIBOR Loan having an Interest Period greater than one (1) month, the day which is one (1) calendar month following the first day of the applicable Interest Period and each day which is one (1) calendar month following each such successive LIBOR Interest Payment Date during any such applicable Interest Period.

LIBOR Lending Office shall mean, (a) with respect to the Agent and CIT, the office of JPMorgan Chase Bank, N.A., or any successor thereof, located at 270 Park Avenue, New York, NY 10017, and (b) with respect to each Lender, the address set forth on the signature page to this Financing Agreement or the Assignment and Transfer Agreement to which such Lender is a party.

LIBOR Loan shall mean any loans made pursuant to this Financing Agreement that bear interest based upon LIBOR.

Line of Credit Fee shall mean, for any month, the product obtained by multiplying (a)(i) the amount of the Revolving Line of Credit minus (ii) the average daily principal balance of Revolving Loans and the average daily undrawn amount of Letters of Credit outstanding during such month, times (b) three-eighths of one percent (0.375%) per annum for the number of days in said month.

Loan Facility Fee shall mean the fees described as such and payable to the Agent, for the benefit of the Lenders, in accordance with, and pursuant to, the provisions of Section 7.6 or Section 7.7 of this Financing Agreement.

Market Price shall mean the market price of the Inventory in question as determined by the Collateral Consultant from time to time by reference to the London Metal Exchange.

Material Adverse Effect shall mean a material adverse effect on either (a) the business, condition (financial or otherwise), operations, performance or properties of the Company, (b) the ability of the Company to perform its obligations under this Financing Agreement or any other DIP Financing Document, or to enforce its rights against account debtors of the Company, (c) the value of the Collateral or (d) the ability of the Agent or the Lenders to enforce the Obligations or their rights and remedies under this Financing Agreement or any of the other DIP Financing Documents.

Maximum Rate shall mean the maximum rate of nonusurious interest permitted from day to day by applicable law, including as to Chapter 303 of the Texas Finance Code (and as the same may be incorporated by reference in other Texas statutes) but otherwise without limitation, that rate based upon the “weekly rate ceiling” and calculated after taking into account any and all relevant fees, payments and other charges which are deemed to be interest under applicable law.

Mitsui Cash Collateral Account shall have the meaning given to such term in the Mitsui Cash Collateral Order.

Mitsui Cash Collateral Order shall mean the Court’s Agreed Interim Order Authorizing Use of Cash Collateral, and Setting Final Hearing pursuant to Fed. R. Bankr. P. 4001(b) and (c) entered in the Chapter 11 Case, as such order may be amended, modified or revised from time to time.

Mitsui Cash Proceeds shall mean any amounts required by the Mitsui Cash Collateral Order to be segregated for deposit into the Mitsui Cash Collateral Account.

Net Availability shall mean, at any time, the amount by which (a) the Borrowing Base of the Company at such time exceeds (b) the sum at such time of (i) the principal amount of all outstanding Revolving Loans, plus (ii) the undrawn amount of all outstanding Letters of Credit.

Net Orderly Liquidation Value shall mean, at any time, the aggregate Gross Metal Value of the Inventory in question less all marketing, treating and refining costs and other limiting conditions as estimated by the Collateral Consultant to be incurred by the Agent and the Lenders in connection with an orderly liquidation thereof.

Non-Operating Collections shall mean non-operating cash collections payable to or received by the Company arising from fixed asset sales (other than, from and after the Commitment Increase Effective Date, with respect to fixed assets included in the Supplemental Asset Component), dividends and distributions from subsidiaries of the Company other than AR Silver Bell Inc., Casualty Proceeds (other than with respect to Inventory), Excluded Collateral and income tax refunds.

Non-Operating Real Estate shall mean any Real Estate that is not Operating Real Estate.

Obligations shall mean, without duplication: (a) all loans, advances and other extensions of credit made by the Agent for the account of the Lenders to the Company or to others for the Company's account (including, without limitation, all Revolving Loans and all obligations of the Agent under Letter of Credit Guaranties); (b) any and all other indebtedness, obligations and liabilities which may be owed by the Company to the Agent or any Lender and arising out of, or incurred in connection with, this Financing Agreement or any of the other DIP Financing Documents (including all Out-of-Pocket Expenses), whether (i) now in existence or incurred by the Company from time to time hereafter, (ii) secured by pledge, lien upon or security interest in any of the Company's assets or property or the assets or property of any other person, firm, entity or corporation, (iii) such indebtedness is absolute or contingent, joint or several, matured or unmatured, direct or indirect, or (iv) the Company is liable to the Agent or any Lender for such indebtedness as principal, surety, endorser, guarantor or otherwise; and (c) the Company's liabilities to the Agent under any instrument of guaranty or indemnity, or arising under any guaranty, endorsement or undertaking which the Agent, on behalf of the Lenders, may make or issue to others for the Company's account, including any accommodations extended by the Agent with respect to applications for Letters of Credit, the Agent's acceptance of drafts or the Agent's endorsement of notes or other instruments for the Company's account and benefit.

Operating Real Estate shall mean the Real Estate owned and operated by the Company and described on Schedule 1.1(C) attached hereto, as such Schedule may be amended or supplemented from time to time by notice hereunder from the Company to the Agent.

Other Collateral shall mean: (a) all present and hereafter established Depository Accounts; (b) all cash and other monies and property in the possession or control of the Agent or any Lender (including negative balances in the Revolving Loan Account); (c) all books, records, ledger cards, disks and related data processing software at any time evidencing or containing information relating to any of the Collateral described herein or otherwise necessary or helpful in the collection thereof or realization thereon; and (d) all Proceeds of any of the foregoing.

Out-of-Pocket Expenses shall mean all of the Agent's and the Lenders' present and future actual costs, fees and expenses incurred in connection with this Financing Agreement and the other DIP Financing Documents, including, without limitation, (a) the cost of lien searches (including tax lien and judgment lien searches), pending litigation searches and similar items, (b) fees and taxes imposed in connection with the filing of any financing statements or other personal property security documents; (c) all actual costs and expenses incurred by the Agent in opening and maintaining the Depository Accounts and any related lockboxes, depositing checks, and receiving and transferring funds (including charges imposed on the Agent for "insufficient funds" and the return of deposited checks); (d) any amounts paid by, incurred by or charged to the Agent by an Issuing Bank under any Letter of Credit or the reimbursement agreement relating thereto, any application for Letter of Credit, Letter of Credit Guaranty or other like document which pertains either directly or indirectly to Letters of Credit, and the Agent's standard fees relating to the Letters of Credit and any drafts thereunder; (e) note taxes, intangible taxes and mortgage or recording taxes and fees; (f) all costs of the reports or title commitments, all appraisal fees and expenses payable by the Company hereunder, and all costs, fees and expenses incurred by the Agent and the Lenders in connection with any action taken under Section 6.2(a) hereof, including reasonable travel, meal and lodging expenses of the Agent's personnel; (g) all actual costs that the Agent may incur to maintain the Required Insurance in

accordance with the terms of this Financing Agreement, and all reasonable costs, fees and expenses incurred by the Agent in connection with the collection of Casualty Proceeds and the monitoring of any repair or restoration of any Real Estate; (h) all actual and reasonable costs, fees, expenses and disbursements of outside counsel hired by the Agent to consummate the transactions contemplated by this Financing Agreement (including, without limitation, the documentation and negotiation this Financing Agreement, the other DIP Financing Documents and all amendments, supplements and restatements thereto or thereof), and to advise the Agent and/or the Lenders as to matters relating to the transactions contemplated hereby; (i) all actual costs, fees and expenses incurred by the Agent and the Lenders in connection with any action taken under Section 9.3 hereof; (j) all actual costs, fees and expenses of the Collateral Consultant; and (k) without duplication, all costs, fees and expenses incurred by the Agent and the Lenders in connection with the collection, liquidation, enforcement, protection and defense of the Obligations, the Collateral and the rights of the Agent and the Lenders under this Financing Agreement, including, without limitation, all reasonable fees and disbursements of in-house and outside counsel to the Agent and the Lenders incurred as a result of a workout, restructuring, reorganization, liquidation, insolvency proceeding and in any appeals arising therefrom, whether incurred before, during or after the termination of this Financing Agreement or the commencement of any case with respect to the Company under the United States Bankruptcy Code or any similar statute.

Overadvances shall mean, at any time, the amount by which (a) the sum at such time of the principal amount of all outstanding Revolving Loans plus the undrawn amount of all outstanding Letters of Credit exceeds (b) the Borrowing Base at such time.

Patents shall mean all present and hereafter acquired patents, patent applications, registrations, all reissues and renewals thereof, all licenses thereof, all inventions and improvements claimed thereunder, all general intangible, intellectual property and other rights of the Company with respect thereto, and all income, royalties and other Proceeds of the foregoing.

Permitted Distributions shall mean:

(a) distributions or dividends from a wholly-owned subsidiary of the Company to another such wholly-owned subsidiary or to the Company; or

(b) distributions or dividends payable solely in stock or other equity interests (or options, warrants or other rights to purchase stock or other equity interest) of the Company.

Permitted Encumbrances shall mean: (a) liens existing on the Closing Date and listed on Schedule 1.1(B) hereto and any renewals or extensions (but not increases) thereof; (b) statutory liens of landlords and liens of carriers, warehousemen, bailees, mechanics, materialmen, garagemen and other like liens imposed by law, created in the ordinary course of business and securing amounts not yet due (or which are being contested in good faith, by appropriate proceedings or other appropriate actions which are sufficient to prevent imminent foreclosure of such liens), and with respect to which adequate reserves or other appropriate provisions are being maintained by the Company in accordance with GAAP; (c) deposits made (and the liens thereon) in the ordinary course of business of the Company (including, without limitation, security deposits for leases, utilities, trade vendors, service providers, indemnity

bonds, surety bonds and appeal bonds) to secure the performance of tenders, bids, contracts (other than for the repayment or guarantee of borrowed money or purchase money obligations), financial assurance requirements of regulatory authorities, statutory obligations and other similar obligations arising as a result of progress payments under government contracts; (d) liens granted to the Agent, for the benefit of the Lenders, by the Company; (e) liens of judgment creditors existing on the Closing Date and listed on Schedule 1.1(B) hereto, provided that any judgment creditor with respect thereto is and at all times remains effectively stayed from taking any action to realize on its lien or attach its lien to any of the Company's assets (other than Non-Operating Real Estate); (f) Permitted Tax Liens and other valid government offset rights; (g) Purchase Money Liens; (h) easements (including, without limitation, reciprocal easement agreements and utility agreements), encroachments, minor defects or irregularities in title, variation and other restrictions, charges or encumbrances (whether or not recorded) affecting the Real Estate, if applicable, and which in the aggregate (i) do not materially interfere with the occupation, use or enjoyment by the Company of any Operating Real Estate so encumbered and (ii) do not materially and adversely affect the value of any Operating Real Estate; and (i) other post-petition liens securing Permitted Indebtedness or other post-petition obligations not exceeding an aggregate principal amount of \$250,000.00 at any time outstanding.

Permitted Indebtedness shall mean: (a) current Indebtedness maturing in less than one year and incurred in the ordinary course of business for raw materials, supplies, equipment, services, Taxes or labor; (b) Indebtedness secured by Purchase Money Liens; (c) Indebtedness arising under the Letters of Credit and this Financing Agreement; (d) deferred Taxes and other expenses incurred in the ordinary course of business; (e) Subordinated Debt; (f) obligations in respect of Capital Leases not exceeding the amount permitted by Section 6.3(b); (g) other Indebtedness existing on the Closing Date and listed on Schedule 1.1(A) attached hereto, and any refinancings, extensions and replacements (but not increases) thereof; and (h) other post-petition Indebtedness not exceeding an aggregate principal amount of \$500,000.00 at any time outstanding.

Permitted Investments shall mean: (a) direct obligations of, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by, the United States of America, in any case maturing within one year after the acquisition thereof; (b) obligations of any corporation or other entity organized under the laws of any state of the United States or under the laws of any other nation, payable in the United States, expressed to mature not later than one year following the date of issuance thereof, and rated "A-1" by Standard & Poor's Ratings Group or "P-1" by Moody's Investors Service, Inc.; (c) certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued by a commercial bank or trust company organized under the laws of the United States or any state thereof having capital surplus and undivided profits aggregating at least \$1,000,000,000, and being rated "A-" or better by Standard & Poor's Ratings Group or "A3" or better by Moody's Investors Service, Inc.; (d) repurchase agreements having a term of not more than one year and entered into with any financial institution whose long term unsecured debt obligations are rated "A-" or better by Standard & Poor's Ratings Group or "A3" by Moody's Investors Service, Inc.; (e) shares of money market mutual funds that are classified as current assets in accordance with GAAP and that invest solely in investments described in clauses (a) through (d), the shares of which mutual funds are rated "AAA" by Standard & Poor's Ratings Group, which mutual funds are managed by entities having capital and surplus in excess of

\$1,000,000,000; and (f) other investments not exceeding \$100,000.00 in the aggregate at any time outstanding.

Permitted Tax Liens shall mean (i) liens for Taxes not due and payable, (ii) valid liens for ad valorem taxes on any Collateral for any tax years, and (iii) liens for Taxes that the Company is contesting in good faith, by appropriate proceedings which are sufficient to prevent imminent foreclosure of such liens, and with respect to which adequate reserves are being maintained by the Company in accordance with GAAP; provided that (a) liens described in either clause (i) or clause (iii) are not filed of record in any public office, (b) other than with respect to Real Estate, such liens described in clauses (ii) or (iii) are not senior in priority to the liens granted by the Company to the Agent, for the benefit of the Lenders, and (c) such liens described in clause (iii) do not secure taxes owed to the United States of America (or any department or agency thereof) or any State or State authority, if applicable State law provides for the priority of tax liens in a manner similar to the laws of the United States of America.

Person shall mean an individual, partnership, corporation, limited liability company, limited liability partnership, joint stock company, land trust, business trust, or unincorporated organization, or a governmental authority.

Petition Date shall mean August 9, 2005.

Pro Rata Percentage shall mean, as to each Lender at any time, a fraction (expressed as a percentage), the numerator of which is the amount of such Lender's Commitment at such time and the denominator of which is the aggregate amount of all Commitments at such time (or in the event that the Commitments of the Lenders hereunder have terminated, the numerator of which is the principal amount of loans then owed to such Lender hereunder and the denominator of which is the principal amount of loans then owed to all Lenders hereunder, as reflected by CIT's System).

Proceeds shall have the meaning given to such term in the UCC, including, without limitation, all Casualty Proceeds.

Professional Expenses shall mean the fees and reimbursable expenses of a Professional Person for which the Company is liable.

Professional Person shall mean (a) a Person who is an attorney, accountant, appraiser, auctioneer or other professional person and who is retained, with Court approval, by the Company or one of its subsidiaries pursuant to Section 327 of the Bankruptcy Code or (b) a creditors' committee pursuant to Section 1103(a) of the Bankruptcy Code.

Promissory Notes shall mean, collectively, the notes in the form of Exhibit B attached hereto, delivered by the Company to each Lender to evidence the Revolving Loans made by such Lender to the Company pursuant to this Financing Agreement.

Purchase Money Liens shall mean liens on any Equipment acquired by the Company after the date of this Financing Agreement, provided that (a) each such lien shall attach only to the Equipment acquired, and (b) the indebtedness incurred by the Company in connection with such acquisitions shall not exceed the amount permitted by Section 6.3(b).

Real Estate shall mean all of the Company's present and future fee and leasehold interests in real property, including the Operating Real Estate, which interests will be subjected to a lien in favor of the Agent, for the benefit of the Lenders, pursuant to the Financing Order.

Regulatory Change shall mean any change after the Closing Date in United States federal, state or foreign law or regulation (including, without limitation, Regulation D of the Board of Governors of the Federal Reserve System), or the adoption or making after the Closing Date of any interpretation, directive or request applying to a class of lenders including the Agent or any Lender of or under any United States federal, state or foreign law or regulation, in each case whether or not having the force of law and whether or not failure to comply therewith would be unlawful.

Reorganization Plan shall mean a plan of reorganization proposed by the Company or any other Person (including the Agent or any Lender) in the Chapter 11 Case.

Required Insurance shall have the meaning provided for in Section 6.2(c) of this Financing Agreement.

Required Lenders shall mean (a) at all times while there are two (2) or fewer Lenders hereunder, all of the Lenders, and (b) at all times while there are three (3) or more Lenders hereunder, those Lenders holding at least fifty-one percent (51%) of the total Commitments under the Revolving Line of Credit (or fifty-one percent (51%) of the outstanding principal amount of all loans outstanding hereunder, as reflected by CIT's System, in the event that the Commitments of the Lenders hereunder have terminated).

Responsible Officer shall mean, as to any entity, the chief executive officer, chief operating officer, chief financial officer, controller or chief accounting officer of such entity.

Revolving Line of Credit shall mean the Commitments of the Lenders to make Revolving Loans pursuant to Article 3 of this Financing Agreement and assist the Company in opening Letters of Credit pursuant to Article 4 of this Financing Agreement, in an aggregate amount equal to \$75,000,000, as such amount may be increased or reduced from time to time pursuant to the terms hereof.

Revolving Loan Account shall mean the account on the Agent's books, in the Company's name, in which the Company will be charged with all Obligations when due or incurred by the Agent or any Lender.

Revolving Loans shall mean the loans and advances made from time to time to or for the account of the Company by the Agent, on behalf of the Lenders, pursuant to Article 3 of this Financing Agreement.

Settlement Date shall mean Friday of each week (or if any Friday is not a Business Day on which all Lenders are open for business, the immediately preceding Business Day on which all Lenders are open for business), provided that, after the occurrence of an Event of Default or during a continuing decline or sudden increase in the principal amount of Revolving Loans, the Agent, in its discretion, may require that the Settlement Date occur more frequently (even daily)

so long as any Settlement Date chosen by the Agent is a Business Day on which each Lender is open for business.

Silver Bell Equity Interest shall mean the Company's equity interest in AR Silver Bell, Inc., which is a member of Silver Bell Mining, LLC.

Subordinated Debt shall mean all indebtedness of the Company (and the note(s) evidencing such indebtedness) that is subordinated to the prior payment and satisfaction of the Obligations pursuant to a Subordination Agreement.

Subordination Agreement[s] shall mean (a) an agreement (in form and substance satisfactory to the Agent) among the Company, a subordinating creditor and the Agent, on behalf of the Lenders, pursuant to which Subordinated Debt is subordinated to the prior payment and satisfaction of the Obligations, and (b) any note, indenture, note purchase agreement or similar instrument or agreement, pursuant to which the indebtedness evidenced thereby or issued thereunder is subordinated to the Obligations by the express terms of such note, indenture, note purchase agreement or similar instrument or agreement.

Supplemental Asset Component shall mean the Eligible Equipment, the Silver Bell Equity Interest, and the Eligible Real Estate.

Supplemental Asset Component Borrowing Base Amount shall mean the lesser of (a) the lesser of (i) \$75,000,000 or (ii) the Commitment Increase Amount, or (b) the sum of (i) 80% of the Appraised Value of Eligible Equipment; (ii) 70% of the Appraised Value of the Silver Bell Equity Interest; and (iii) 70% of the Appraised Value of Eligible Real Estate.

Taxes shall mean all federal, state, municipal and other governmental taxes, levies, charges, claims and assessments which are or may be owed or collected by the Company with respect to its business, operations, Collateral or otherwise.

Termination Date shall mean the earliest of the date: (a) which is two years after the Petition Date; (b) of the entry of an Order pursuant to Section 363 of the Bankruptcy Code approving the sale of substantially all of the Company's assets; (c) that is the effective date of any Reorganization Plan; (d) of conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; or (e) of dismissal of the Chapter 11 Case.

Total Commitment shall mean (a) \$75,000,000 prior to the Commitment Increase Effective Date and (b) the aggregate Commitments not in excess of \$150,000,000 on and after the Commitment Increase Effective Date.

Trade Accounts Receivable shall mean that portion of the Company's Accounts which arises from the sale of Inventory or the rendition of services in the ordinary course of the Company's business.

Trademarks shall mean all present and hereafter acquired trademarks, trademark registrations, recordings, applications, tradenames, trade styles, corporate names, business names, service marks, logos and any other designs or sources of business identities, prints and labels (on which any of the foregoing may appear), all reissues and renewals thereof, all licenses

thereof, all other general intangible, intellectual property and other rights pertaining to any of the foregoing, together with the goodwill associated therewith, and all income, royalties and other Proceeds of any of the foregoing.

UCC shall mean the Uniform Commercial Code as the same may be amended and in effect from time to time in the State of Texas.

Underwriting Fee shall mean the fees described as such and payable to the Agent, for the sole benefit of CIT, in accordance with, and pursuant to, the provisions of Section 7.6 or Section 7.7 of this Financing Agreement.

Work Stoppage shall mean the strike currently affecting five of the Company's facilities in Arizona and one in Amarillo, Texas.

Working Day shall mean any Business Day on which dealings in foreign currencies and exchanges between banks may be transacted.

ARTICLE 2

CONDITIONS PRECEDENT.

Section 2.1 Conditions Precedent to Initial Funding. The obligation of the Agent and the Lenders to make the initial loans and to assist the Company in obtaining initial Letters of Credit hereunder is subject to the satisfaction, immediately prior to or concurrently with the making of such loans or the issuance of such Letters of Credit, of the following conditions precedent:

(a) **Lien Searches.** The Agent shall have received tax lien, judgment lien and Uniform Commercial Code searches from all jurisdictions reasonably required by the Agent, and such searches shall verify that the Agent, for the benefit of the Lenders, has a first priority security interest in the Collateral (other than Non-Operating Real Estate), subject only to Permitted Encumbrances.

(b) **Casualty Insurance.** The Company shall have delivered to the Agent evidence satisfactory to the Agent that all Required Insurance is in full force and effect, and the Agent shall have confirmed that the Agent, for the benefit of the Lenders, has been named as a loss payee or additional insured with respect to the Required Insurance in a manner satisfactory to the Agent.

(c) **Financing Order.** The Financing Order shall have been entered, shall be in full force and effect and shall not have been vacated, reversed, modified or stayed in any respect (and if such Financing Order is the subject of a pending appeal, no performance of any obligation of any party shall have been stayed pending such appeal).

(d) **Resolutions.** The Agent shall have received a copy of the resolutions of the Board of Directors of the Company authorizing the execution, delivery and performance of the DIP Financing Documents to be executed by the Company, certified by the Secretary or Assistant Secretary of the Company as of the date hereof, together with a certificate of such

Secretary or Assistant Secretary as to the incumbency and signature of the officer(s) executing the DIP Financing Documents on behalf of the Company.

(e) Organizational Documents. The Agent shall have received a copy of the Certificate of Formation of the Company, certified by the applicable authority in the Company's State of formation, and copies of the limited liability company agreement (as amended through the date hereof) of the Company, certified by the Secretary or an Assistant Secretary thereof.

(f) Officer's Certificate. The Agent shall have received an executed officer's certificate for the Company, satisfactory in form and substance to the Agent, certifying that as of the Closing Date (i) the representations and warranties contained herein are true and correct in all material respects, and (ii) no Default or Event of Default has occurred.

(g) Silver Bell. The Agent shall have received and be satisfied with the financial statements and organizational documents of AR Silver Bell, Inc. and Silver Bell Mining, LLC, and title, lien and other reports with respect to the Company's and AR Silver Bell, Inc.'s equity interests therein. The Company shall have executed and delivered to the Agent a pledge and security agreement, in form and substance satisfactory to the Agent, granting to the Agent, as additional Collateral for the Obligations, a security interest in not less than 100% of its equity interests in AR Silver Bell, Inc. This condition shall not be required to be satisfied on the Closing Date but shall be required to be satisfied in connection with the entry of the Court's final Financing Order.

(h) Disbursement Authorizations. The Company shall have delivered to the Agent all information necessary for the Agent to issue wire transfer instructions on behalf of the Company for the initial and subsequent loans and/or advances to be made under this Financing Agreement, including disbursement authorizations in form acceptable to the Agent.

(i) Examination & Verification; Net Availability. The Agent shall have completed and be satisfied with an examination and verification of the Trade Accounts Receivable, Inventory and the books and records of the Company, and such examination shall indicate that (i) after giving effect to all loans, advances and extensions of credit to be made at closing, the Company shall have opening Net Availability of not less than \$10,000,000.00, and (ii) no material adverse change has occurred in the financial condition, business, prospects, profits, operations or assets of the Company since August 31, 2005.

(j) Depository Accounts; Payment Direction. (i) The Company or the Agent, on behalf of the Lenders, shall have established one or more Depository Accounts with respect to the collection of Accounts and the deposit of proceeds of Collateral, and (ii) the Agent, the Company and each depository bank shall have entered into a Depository Account Control Agreement with respect to each Depository Account.

(k) Termination/Subordination of Certain Liens. The Company shall have delivered to the Agent satisfactory evidence that all liens and security interests in favor of Americas Sales Corporation, Gerald Metals Inc., Glencore Ltd., Sempra Metals & Concentrates Corp., and Revere Copper Products Inc. in the Inventory of the Company have been terminated and/or released or such liens and security interests have been subordinated to the Agent's

security interest, including by virtue of the Financing Order; provided that this condition shall be waived until the final hearing on the DIP Facility with respect to Sempra Metals & Concentrates Corp. based on the Agent's establishment of a reserve in the amount of \$6,000,000 which is equal to the stipulated maximum amount of Sempra Metals & Concentrates Corp.'s security interest in Inventory of the Company.

(l) Opinions. Subject to the filing, priority and remedies provisions of the UCC, the provisions of the Bankruptcy Code, insolvency statutes or other like laws, the equity powers of a court of law and such other matters as may be agreed upon with the Agent, counsel for the Company shall have delivered to the Agent, on behalf of the Lenders, opinion(s) satisfactory to the Agent opining, *inter alia*, that the execution and delivery of the DIP Financing Documents by the Company (i) are valid, binding and enforceable according to their respective terms, (ii) are duly authorized, (iii) do not violate any terms, provisions, representations or covenants in the certificate of formation, limited liability company agreement or other organizational agreement of the Company, and (iv) to the best knowledge of such counsel, do not violate any terms, provisions, representations or covenants in any loan agreement, mortgage, deed of trust, note, security agreement, indenture or other material contract to which the Company is a signatory, or by which the Company (or any of the Company's assets) are bound.

(m) Legal Restraints/Litigation. As of the Closing Date, there shall be no (x) injunction, writ or restraining order restraining or prohibiting the consummation of the financing arrangements contemplated under this Financing Agreement, or (y) suit, action, investigation or proceeding (judicial or administrative) pending against the Company or any of its assets, which, in the opinion of the Agent, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

(n) Additional Documents. The Company shall have executed and delivered to the Agent all DIP Financing Documents necessary to consummate the lending arrangement contemplated by this Financing Agreement.

(o) Summary of Liabilities. The Agent shall have received and be satisfied with a summary of the liabilities of the Company, the enforcement of which is stayed by the Chapter 11 Case.

(p) Revolving Loan Promissory Notes. If the Required Lenders elect to evidence their Commitments with respect to the Revolving Line of Credit with Promissory Notes, the Company shall have executed and delivered to each Lender a Promissory Note in the form attached hereto as Exhibit B.

(q) Financial Advisor. The Company shall have engaged a financial advisor which is acceptable to the Agent to provide financial advisory services and assist and advise the Company in preparing a liquidity analysis and budgets and developing a strategic business plan.

(r) Borrowing Base Report. The Company shall have delivered to the Agent an initial Borrowing Base report, in form and substance acceptable to the Agent, certified by the chief financial officer of the Company.

(s) Budget. The Agent shall have received and approved the Budget.

(t) Commitment Letter. The Company shall have fully complied with all of the terms and conditions of the Commitment Letter.

Upon the execution of this Financing Agreement and the initial disbursement of the initial loans hereunder, all of the above conditions precedent shall have been deemed satisfied, except as the Company and the Agent shall otherwise agree in a separate writing.

Section 2.2 Conditions Precedent to Commitment Increase. The obligation of the Agent and the Lenders to increase the Total Commitment to an amount in excess of \$75,000,000 is subject to the satisfaction of the following conditions precedent:

(a) Successful Syndication. CIT shall have successfully syndicated the Revolving Line of Credit to its desired hold level (such amount to be determined by CIT at the time of syndication), as evidenced by the execution and delivery of one or more Assignment and Transfer Agreements and Commitment Increase Agreements satisfactory to CIT and, in order to achieve such successful syndication, any necessary adjustments to the Loan Facility Fee and the Applicable Margin, as contemplated by Section 7.7 and by the definition of “Applicable Margin”, respectively, shall have been made.

(b) Requested Increase in Total Commitment. The Company shall have requested an increase in the Total Commitment as set forth in Section 3.8 hereof, and such increase shall have been effectuated through one or more Commitment Increase Agreements.

(c) Collateral Information. The Agent shall have received satisfactory collateral audits, appraisals and title and lien reports with respect to the various sub-components of the Supplemental Asset Component.

(d) DIP Financing Documents. The Company shall have executed and delivered to the Agent all DIP Financing Documents that the Agent reasonably deems necessary or appropriate to better create, evidence and perfect its security interests and liens in the Collateral comprising the Supplemental Asset Component.

(e) Officer’s Certificate. The Agent shall have received an executed officer’s certificate for the Company, reasonably satisfactory in form and substance to the Agent, certifying that as of the Commitment Increase Effective Date, (i) the representations and warranties contained herein are true and correct in all material respects, (ii) no Default or Event of Default has occurred and is continuing, and (iii) no event or condition has occurred since the Closing Date which has had, or is reasonably expected to have, a Material Adverse Effect.

ARTICLE 3 **REVOLVING LOANS AND COLLECTIONS**

Section 3.1 Funding Conditions and Procedures

(a) Amounts and Requests. Subject to the terms and conditions of this Financing Agreement, the Agent and the Lenders, pro rata in accordance with their respective

Pro Rata Percentages, severally (and not jointly) agree to make loans and advances to the Company on a revolving basis (i.e. subject to the limitations set forth herein, the Company may borrow, repay and reborrow Revolving Loans). In no event shall the Agent or any Lender have an obligation to make a Revolving Loan to the Company, nor shall the Company be entitled to request or receive a Revolving Loan, if (i) a Default or Event of Default shall have occurred and remain outstanding on the date of request for such Revolving Loan or the date of the funding thereof, (ii) the amount of such Revolving Loan, when added to the principal amount of the Revolving Loans outstanding plus the undrawn amount of all Letters of Credit on the date of the request therefor or the funding thereof, would exceed the Revolving Line of Credit, or (iii) the amount of such Revolving Loan would exceed the Net Availability of the Company on the date of the request therefor or the funding thereof. Any request for a Revolving Loan must be received by an officer of the Agent no later than 11:00 a.m., Dallas, Texas time, (A) on the Business Day on which such Revolving Loan is required, if the request is for a Chase Bank Rate Loan, or (B) three (3) Business Days prior to the Business Day on which such Revolving Loan is required, if the request is for a LIBOR Loan. The funding of any LIBOR Loan is also subject to the satisfaction of the conditions set forth in Section 7.9 of this Financing Agreement.

(b) Phone and Electronic Loan Requests. The Company hereby authorizes the Agent and the Lenders to make Revolving Loans to the Company based upon a telephonic or e-mail request (or, if permitted by the Agent, based upon a request posted on CIT's System) made by any officer or other employee of the Company that the Company has authorized in writing to request Revolving Loans hereunder, as reflected by the Agent's records. Each telephonic, e-mail or posted request by the Company shall be irrevocable, and the Company agrees to confirm any such request for a Revolving Loan in a writing approved by the Agent and signed by such authorized officer or employee, within one (1) Business Day of the Agent's request for such confirmation. The Agent shall have the right to rely on any telephonic, e-mail or posted request for a Revolving Loan made by anyone that the Agent reasonably believes to be an officer or other employee of the Company that the Company has authorized in writing to request Revolving Loans hereunder, without further investigation.

(c) Advances by the Agent. The Agent, on behalf of the Lenders, shall disburse all loans and advances to the Company and shall handle all collections of Collateral and repayment of all Obligations. It is understood that for purposes of advances to the Company and for purposes of this Section 3.1, the Agent will be using the funds of the Agent, and pending settlement, all interest accruing on such advances shall be payable to the Agent.

(d) Settlement Among Lenders.

(i) Unless the Agent shall have been notified in writing by any Lender prior to any advance to the Company that such Lender will not make the amount which would constitute its Pro Rata Percentage of the borrowing on such date available to the Agent, the Agent may assume that such Lender shall make such amount available to the Agent on a Settlement Date, and in reliance upon such assumption, the Agent may make available to the Company a corresponding amount. A certificate of the Agent submitted to any Lender with respect to any amount owing under this subsection shall be conclusive, absent manifest error. If such Lender's Pro Rata Percentage of such borrowing is not in fact made available to the Agent by such Lender on the Settlement

Date, the Agent shall be entitled to recover from the Company, on demand, such Lender's Pro Rata Percentage of such borrowing, together with interest thereon (for the account of the Agent) at the rate per annum applicable to such borrowing, without prejudice to any rights which the Agent may have against such Lender under Section 12.3 hereof. Nothing contained herein shall be deemed to obligate the Agent to make available to the Company the full amount of a requested advance when the Agent has any notice (written or otherwise) that any of the Lenders will not advance its Pro Rata Percentage thereof.

(ii) On each Settlement Date, the Agent and the Lenders shall each remit to the other, in immediately available funds, all amounts necessary so as to ensure that, as of the Settlement Date, the Lenders shall have advanced their respective Pro Rata Percentages of all outstanding Revolving Loans. Each Lender's obligation to make the Revolving Loans referred to in Section 3.1(a) and to make the settlements pursuant to this Section 3.1(d) shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation (v) any set-off, counterclaim, recoupment, defense or other right which any such Lender or the Company may have against the Agent, the Company, any other Lender or any other person, (w) the occurrence or continuance of a Default or an Event of Default, (x) any adverse change in the condition (financial or otherwise) of the Company, (y) any breach of this Financing Agreement or any other DIP Financing Document by the Company or any other Lender or (z) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(e) Reaffirmation of Representations and Warranties. All of the representations and warranties made by the Company in this Financing Agreement as of the date hereof shall be deemed to be remade by the Company each time that the Company requests a Revolving Loan or a Letter of Credit under this Financing Agreement, and each such request shall also constitute a representation and warranty by the Company that, after giving effect to the requested Revolving Loan or Letter of Credit, no Default or Event of Default shall have occurred and remain outstanding.

Section 3.2 Handling of Proceeds of Collateral; Cash Dominion.

(a) Collection of Accounts and Other Proceeds. The Company, at its expense, will enforce and collect payments and other amounts owing on all Accounts in the ordinary course of the Company's business subject to the terms hereof. Except with respect to Mitsui Cash Proceeds (which shall be deposited by the Company in the Mitsui Cash Collateral Account and shall not be deposited in any lockbox or Depository Account). The Company agrees to either direct its account debtors to send payments on all Accounts directly to a lockbox associated with a Depository Account or deposit or cause to be deposited payments on Accounts directly to a Depository Account. In addition to the foregoing, except with respect to Non-Operating Collections, should the Company ever receive any payment on an Account or other Proceeds of the sale of Collateral, including checks, cash, receipts from credit card sales and receipts, notes or other instruments or property with respect to any Collateral, the Company agrees to hold such proceeds in trust for the Agent, for the benefit of the Lenders, separate from the Company's other property and funds, and to deposit such proceeds directly into a Depository Account within one Business Day after the Business Day received; provided, however, that in

the event that such proceeds on any one day exceed \$100,000, the Company shall use commercially reasonable efforts to cause such proceeds to be deposited on the Business Day received.

(b) Transfer of Funds from Depository Accounts. Funds remaining on deposit in a Depository Account shall be transferred to the Agent's Bank Account on each Business Day, and the Company agrees to take all actions reasonably required by the Agent or by any bank at which a Depository Account is maintained in order to effectuate the transfer of funds in this manner. All amounts received from a Depository Account and any other proceeds of the Collateral deposited into the Agent's Bank Account will, for purposes of calculating Net Availability and interest, be credited to the Revolving Loan Account on the date of deposit in the Agent's Bank Account. No checks, drafts or other instruments received by the Agent shall constitute final payment to the Agent unless and until such instruments have actually been collected.

(c) New Depository Accounts. Except as otherwise provided in this clause (c), the Company agrees not to have any lockbox or bank account unless the Agent, the Company and the bank with which such lockbox or such account is maintained, have executed a Depository Account Control Agreement with respect to such lockbox and/or related bank account, and upon such execution, such lockbox and/or bank account shall constitute a Depository Account for purposes of this Financing Agreement; provided that the Company may have the following accounts not constituting Depository Accounts; (i) bank accounts for the sole purpose of depositing proceeds of Excluded Collateral or Non-Operating Collections, (ii) payroll accounts maintained for the sole purpose of paying salaries, (iii) the Mitsui Cash Collateral Account and (iv) other bank accounts having an aggregate balance not in excess of \$50,000.

Section 3.3 Revolving Loan Account. The Agent shall charge the Revolving Loan Account for all loans and advances made by the Agent and the Lenders to the Company or for the Company's account, and for all other Obligations, including Out-of-Pocket Expenses, when due and payable hereunder. Subject to the provisions of Section 3.5 below, the Agent will credit the Revolving Loan Account with all amounts received by the Agent from each Depository Account or from others for the Company's account, including, as set forth above, all amounts received by the Agent in payment of Accounts, and such amounts will be applied to payment of the Obligations in the order and manner set forth herein. In no event shall prior recourse to any Account or other security granted to or by the Company be a prerequisite to the Agent's or the Lenders' rights to demand payment of any of the Obligations. In addition, the Company agrees that neither the Agent nor any Lender shall have any obligation whatsoever to perform in any respect any of the Company's contracts or obligations relating to the Accounts.

Section 3.4 Repayment of Overadvances. If at any time (a) the sum of the outstanding balance of Revolving Loans and undrawn amount of Letters of Credit exceeds the Revolving Line of Credit, or (b) an Overadvance exists, the amount of such excess (in the case of clause (a)) or the amount of the Overadvance (in the case of clause (b)) shall be immediately due and payable unless the Agent (as permitted hereunder) or the Lenders otherwise agree in writing. Should the Agent or the Lenders for any reason honor requests for Overadvances, such Overadvances shall be made in the Agent's or the Lenders' sole discretion and subject to any additional terms the Agent or the Lenders deem necessary.

Section 3.5 Application of Proceeds of Collateral.

(a) Generally. Unless this Financing Agreement expressly provides otherwise, so long as no Event of Default shall have occurred and remain outstanding, the Agent agrees to apply all Proceeds of Trade Accounts Receivable and all other Proceeds of Collateral (except for Non-Operating Collections and Mitsui Cash Proceeds) received by the Agent to the Obligations, in such order and manner as the Agent shall elect in the exercise of its reasonable business judgment, and all Non-Operating Collections received by the Agent and designated as such by the Company (by written notification to the Agent) shall be transferred to a bank account designated by the Company which is not a Depository Account.

(b) Application of Proceeds to Chase Bank Rate Loans and LIBOR Loans. So long as no Event of Default shall have occurred and remain outstanding, the Agent shall apply all Proceeds of Collateral and other payments described in Section 3.5(a) (except in each case for Non-Operating Collections and Mitsui Cash Proceeds) to Chase Bank Rate Loans until there are no Chase Bank Rate Loans outstanding, and then to LIBOR Loans; provided that in the event the aggregate outstanding principal amount of Revolving Loans that are LIBOR Loans exceeds the Borrowing Base, the Agent may apply all proceeds of Collateral received by the Agent to the payment of the Obligations in such manner and in such order as the Agent may elect in the exercise of its reasonable business judgment. Subject to the terms of the preceding sentence, so long as no Event of Default shall have occurred and remain outstanding, if the Agent receives Proceeds of Collateral or other payments that exceed the outstanding principal amount of Revolving Loans that are Chase Bank Rate Loans, the Company may request, in writing, that the Agent not apply such excess Proceeds to outstanding Revolving Loans that are LIBOR Loans, in which case the Agent shall remit such excess to the Company. If as a result of the application of the provisions of this Section 3.5(b), any Proceeds of Collateral are applied to loans that are LIBOR Loans, such application shall be treated as a prepayment of such LIBOR Loans, and the Lenders shall be entitled to the costs and fees provided for in Section 7.10 hereof.

(c) Application of Proceeds During an Event of Default. If an Event of Default shall have occurred and remain outstanding, the Agent agrees to apply all Proceeds of Collateral, including without limitation all Non-Operating Collections and all other payments received by the Agent to the payment of the Obligations in the manner and order set forth in Section 9.4 hereof. If as a result of the application of the provisions of this Section 3.5(c), any Proceeds of Collateral or payments are applied to loans that are LIBOR Loans, such application shall be treated as a prepayment of such LIBOR Loans and the Lenders shall be entitled to the costs and fees provided for in Section 7.10 hereof.

Section 3.6 Monthly Statement. Within five (5) Business Days after the end of each month, the Agent agrees to prepare and make available to the Company (by mail, facsimile, e-mail or posting to CIT's System, as mutually agreed to by the Company and the Agent) and the Lenders, a statement showing the accounting for the charges, loans, advances and other transactions occurring among the Agent, the Lenders and the Company during that month. Absent manifest error, each monthly statement shall be deemed correct and binding upon the Agent, the Company and the Lenders, and shall constitute accounts stated between the Company and the Lenders and the Agent, as the case may be, unless the Agent receives a written statement

of exception from the Company or any Lender within thirty (30) days of the date of such monthly statement.

Section 3.7 Access to CIT's System. The Agent shall provide to the Company access to CIT's System during normal business hours, for the purposes of (i) obtaining information regarding loan balances and Net Availability, and (ii) if permitted by the Agent, making requests for Revolving Loans and submitting borrowing base certificates. Such access shall be subject to the following terms, in addition to all terms set forth on the website for CIT's System:

(a) The Agent shall provide to the Company an initial password for secured access to CIT's System. The Company shall provide the Agent with a list of officers and employees that are authorized from time to time access CIT's System, and the Company agrees to limit access to the password and CIT's System to such authorized officers and employees. After the initial access, the Company shall be solely responsible for (i) changing and maintaining the integrity of the Company's password and (ii) any unauthorized use of the Company's password or CIT's System by the Company's officers and employees.

(b) The Company shall use the CIT's System and the Company's information thereon solely for the purposes permitted above, and shall not access the CIT's System for the benefit of third parties or provide any information obtained from the CIT's System to third parties. The Agent makes no representation that loan balance or Net Availability information is or will be available, accurate, complete, correct or current at all times. CIT's System may be inoperable or inaccessible from time to time, whether for required website maintenance, upgrades to CIT's System, or for other reasons, and in any such event the Company must obtain loan balance and Net Availability information, and (if permitted by the Agent) make requests for Revolving Loans and submit borrowing base certificates using other available means.

(c) The Company hereby confirms and agrees that CIT's System consists of proprietary software, data, tools, scripts, algorithms, business logic, website designs and interfaces and related intellectual property, information and documentation. CIT's System and related intellectual property, information and documentation are the sole and exclusive property of the Agent, and the Company shall have no right, title or interest therein or thereto, except for the limited right to access CIT's System for the purposes permitted above. Upon termination of this Financing Agreement, the Company agrees to cease any use of the CIT's System.

(d) To the extent not inconsistent with this Financing Agreement, all agreements, covenants and representations and warranties made by the Company in any borrowing base certificate submitted to the Agent by means of CIT's System are incorporated herein by reference.

Section 3.8 Increase in Total Commitment.

(a) If no Default or Event of Default shall have occurred and be continuing, the Company may at any time prior to the Termination Date request an increase in the Total Commitment by giving notice to the Agent of the amount of such proposed increase (such notice, a "**Commitment Increase Notice**"); provided, that, (i) the Commitment of any Lender may not be increased without such Lender's consent, and (ii) the aggregate amount of the Total

Commitment as so increased shall not exceed \$150,000,000. The Agent shall, within five (5) Business Days after receipt of a Commitment Increase Notice, notify each Lender of such request. Each Lender desiring to increase its Commitment shall notify the Agent in writing no later than ten (10) Business Days after receipt of notice from the Agent. Any Lender that does not notify the Agent within the time period specified above that it will increase its Commitment will be deemed to have rejected such offer. Any agreement by a Lender to increase its Commitment shall be irrevocable.

(b) If any proposed increase in the Total Commitment is not fully subscribed by the existing Lenders pursuant to the procedure outlined in clause (a) preceding, the Agent may, in its sole discretion, but with the consent of the Company as to any Person that is not at such time a Lender, offer to any existing Lender or to one or more commercial banks, commercial finance companies or other financial institutions the opportunity to participate in all or a portion of such unsubscribed portion of the increased Total Commitment; provided, that the Commitment of any new Lender shall not be less than \$5,000,000 and shall be in an integral multiple of \$1,000,000.

(c) Any existing Lender that is willing to increase its Commitment shall execute a Commitment Increase Agreement with the Company and Agent, whereupon such Lender shall be bound by, and entitled to the benefits of, this Financing Agreement with respect to the full amount of its Commitment as so increased.

(d) Any commercial bank, commercial finance company or other financial institution which is not an existing Lender and which is willing to participate in the increased Total Commitment shall execute and deliver to the Agent and the Company a Commitment Increase Agreement setting forth its Commitment (subject to the limitations on the amounts thereof set forth herein), and upon the effectiveness of such Commitment Increase Agreement such commercial bank, commercial finance company or other financial institution (a “**New Lender**”) shall become a Lender for all purposes and to the same extent as if originally a party hereto and shall be bound by and entitled to the benefits of this Agreement, and the signature pages hereof shall be deemed to be amended to add the name of such New Lender.

(e) The initial increase in the Total Commitment shall be subject to satisfaction of each of the conditions precedent set forth in Section 2.2. Upon any increase in the Total Commitment pursuant to this Section 3.8, Schedule 3 shall be deemed amended to reflect the Commitment of each Lender (including any New Lender) as thereby increased.

ARTICLE 4 **LETTERS OF CREDIT**

In order to assist the Company in establishing or opening Letters of Credit with an Issuing Bank, the Company has requested that the Lenders (acting through the Agent) join in the applications for such Letters of Credit, and/or guarantee payment or performance of such Letters of Credit and any drafts or acceptances thereunder through the issuance of one or more Letter of Credit Guaranties, thereby lending the Lenders’ credit to the Company, and the Agent and the Lenders have agreed to do so. These arrangements shall be handled by the Agent subject to

satisfaction of the conditions set forth in Section 2.1 hereof and the terms and conditions set forth below.

Section 4.1 Assistance and Purpose. Within the Revolving Line of Credit and subject to sufficient Net Availability, the Lenders (acting through the Agent) shall assist the Company in obtaining Letters of Credit in an aggregate undrawn amount outstanding at any time not to exceed the Letter of Credit Sub-Line. The term, form and purpose of each Letter of Credit and all documentation in connection therewith, and any amendments, modifications or extensions thereof, must be mutually acceptable to the Agent, the Issuing Bank and the Company. Notwithstanding any other provision of this Financing Agreement to the contrary, if a Default or an Event of Default shall have occurred and remain outstanding, the Agent's and the Lenders' assistance in connection with any Letter of Credit shall be at the discretion of the Required Lenders.

Section 4.2 Authority to Charge Revolving Loan Account. The Company hereby authorizes the Agent, without notice to the Company, to charge the Revolving Loan Account with the amount of all indebtedness, liabilities and obligations of any kind incurred by the Agent or the Lenders under a Letter of Credit Guaranty, including the charges of an Issuing Bank, as such indebtedness, liabilities and obligations are charged to or paid by the Agent or the Lenders, or, if earlier, upon the occurrence of an Event of Default. Any amount charged to the Revolving Loan Account pursuant to this Section 4.2 shall be deemed a Chase Bank Rate Loan hereunder and shall incur interest at the rate provided in Section 7.1 (or Section 7.2, if applicable) of this Financing Agreement. The Company confirms that any charges which the Agent may make to the Revolving Loan Account as provided herein will be made as an accommodation to the Company and solely at the Agent's discretion.

Section 4.3 Indemnity Relating to Letters of Credit. The Company unconditionally agrees to indemnify the Agent and the Lenders, and holds the Agent and the Lenders harmless from any and all loss, claim or liability incurred by the Agent or the Lenders arising from any transactions or occurrences relating to Letters of Credit established or opened for the Company's account, the Collateral relating thereto and any drafts or acceptances thereunder, and all Obligations thereunder, including any such loss, claim or liability arising from any error, omission, negligence, misconduct or other action taken by an Issuing Bank, other than for any such loss, claim or liability arising out of the gross negligence or willful misconduct by the Agent or any Lender (IT BEING INTENDED THAT THE AGENT'S AND THE LENDERS' ORDINARY NEGLIGENCE SHALL BE SUBJECT TO INDEMNIFICATION HEREUNDER). This indemnity shall survive the termination of this Financing Agreement and the repayment of the Obligations.

Section 4.4 Compliance of Goods, Documents and Shipments with Agreed Terms. The Agent shall not be responsible for: (a) the existence, character, quality, quantity, condition, packing, value or delivery of the goods purporting to be represented by any documents relating to any Letter of Credit; (b) any difference or variation in the character, quality, quantity, condition, packing, value or delivery of the goods from that expressed in such documents; (c) the validity, sufficiency or genuineness of such documents or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (d) the time, place, manner or order in which shipment is made; (e) partial or

incomplete shipment, or failure or omission to ship any or all of the goods referred to in the Letters of Credit or documents relating thereto; (f) any deviation from instructions; (g) delay, default, or fraud by the shipper and/or anyone else in connection with the goods or the shipping thereof; or (h) any breach of contract between the shipper or vendors and the Company.

Section 4.5 Handling of Goods, Documents and Shipments. The Company agrees that any action taken by the Agent, if taken in good faith, or any action taken by the Issuing Bank of whatever nature, under or in connection with the Letters of Credit, the Letter of Credit Guaranties, drafts or acceptances relating to Letters of Credit, or the goods subject thereto, shall be binding on the Company and shall not result in any liability whatsoever of the Agent to the Company. The Agent shall have the full right and authority, on behalf of the Lenders, to (a) clear and resolve any questions of non-compliance of documents, (b) give any instructions as to acceptance or rejection of any documents or goods, (c) execute any and all steamship or airways guaranties (and applications therefor), indemnities or delivery orders, (d) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents, and (e) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, the Letters of Credit, the Letter of Credit Guaranties or drafts or acceptances relating to Letters of Credit. An Issuing Bank shall be entitled to comply with and honor any and all such documents or instruments executed by or received solely from the Agent, without any notice to or any consent from the Company. Notwithstanding any prior course of conduct or dealing with respect to the foregoing (including amendments to and non-compliance with any documents, and/or the Company's instructions with respect thereto), the Agent may exercise its rights under this Section 4.5 in its sole but reasonable business judgment. In addition, the Company agrees not to, under or in connection with the Letters of Credit, the Letter of Credit Guaranties, drafts or acceptances relating to Letters of Credit, or the goods subject thereto: (i) at any time, (A) execute any application for steamship or airway guaranties, indemnities or delivery orders, (B) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances or documents, or (C) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letters of Credit, drafts or acceptances; and (ii) if an Event of Default shall have occurred and remain outstanding, (A) clear and resolve any questions of non compliance of documents or (B) give any instructions as to acceptances or rejection of any documents or goods.

Section 4.6 Compliance with Laws; Payment of Levies and Taxes. The Company agrees that (a) all necessary import and export licenses and certificates necessary for the import or handling of the Collateral will be promptly procured, (b) all foreign and domestic governmental laws and regulations in regard to the shipment and importation of the Collateral or the financing thereof will be promptly and fully complied with, and (c) any certificate in that regard that the Agent may at any time request will be promptly furnished to the Agent. In connection herewith, the Company represents and warrants to the Agent and the Lenders that all shipments made under any Letter of Credit are and will be in compliance with the laws and regulations of the countries in which the shipments originate and terminate, and are not prohibited by any such laws and regulations. The Company assumes all risk, liability and responsibility for, and agrees to pay and discharge, all present and future local, state, federal or foreign Taxes, duties, or levies pertaining to the importation and delivery of the Collateral. Any embargo, restriction, law, custom or regulation of any country, state, city, or other political

subdivision, where the Collateral is or may be located, or wherein payments are to be made, or wherein drafts may be drawn, negotiated, accepted, or paid, shall be solely the Company's risk, liability and responsibility.

Section 4.7 Subrogation Rights. Upon any payments made to an Issuing Bank under a Letter of Credit Guaranty, the Agent, for the benefit of the Lenders, shall acquire by subrogation, any rights, remedies, duties or obligations granted to or undertaken by the Company to the Issuing Bank in any application for Letter of Credit, any standing agreement relating to Letters of Credit or otherwise, all of which shall be deemed to have been granted to the Agent, for the benefit of the Lenders, and apply in all respects to the Agent and shall be in addition to any rights, remedies, duties or obligations contained herein.

ARTICLE 5 COLLATERAL

Section 5.1 Grant of Security Interest.

(a) As security for the prompt payment in full of all Obligations, the Company hereby pledges and grants to the Agent, for the benefit of the Lenders, a continuing general lien upon, and security interest in, all of the Collateral.

(b) Extent of Security Interests. The security interests granted hereunder or under the Financing Order shall extend and attach to:

(i) all Collateral which is presently in existence and which is owned by the Company or in which the Company has any interest, whether held by the Company or by others for the Company's account, and, if any Collateral is Equipment, whether the Company's interest in such Equipment is as owner, lessee or conditional vendee;

(ii) all Equipment whether the same constitutes personal property or fixtures, including, but without limiting the generality of the foregoing, all dies, jigs, tools, benches, molds, tables, accretions, component parts thereof and additions thereto, as well as all accessories, motors, engines and auxiliary parts used in connection with, or attached to, the Equipment; and

(iii) all Inventory (other than Excluded Inventory) and any portion thereof which may be returned, rejected, reclaimed or repossessed by either the Agent or the Company from the Company's customers, as well as to all supplies, goods, incidentals, packaging materials, labels and any other items which contribute to the finished goods or products manufactured or processed by the Company, or to the sale, promotion or shipment thereof.

In no event shall the security interests granted hereunder or under the Financing Order extend to the Carve-Out. The Agent and the Lenders agree that so long as no Default or Event of Default shall have occurred and be continuing, the Company shall be permitted to pay Professional Expenses allowed by the Court, and such payments will not count against the Carve-Out nor will

the Professional Expenses incurred during the month prior to the date on which the Default or Event of Default occurred count against the Carve-Out.

Section 5.2 Limited License. Regardless of whether the Agent has received a security interest in any General Intangibles, the Company hereby irrevocably grants to the Agent, for the benefit of the Lenders, a royalty-free, non-exclusive license to use the Company's Trademarks, Copyrights, Patents and other proprietary and intellectual property rights, in connection with the (a) advertisement for sale, and the sale or other disposition of, any finished goods Inventory by the Agent in accordance with the provisions of this Financing Agreement, and (b) the manufacture, assembly, completion and preparation for sale of any unfinished Inventory by the Agent in accordance with the provisions of this Financing Agreement.

Section 5.3 Representations, Covenants and Agreements Regarding Collateral Generally.

(a) Representations and Warranties. The Company hereby represents and warrants to the Agent and the Lenders that except for the Permitted Encumbrances, (i) upon the entry of the Financing Order, the Agent will have a valid, perfected, first priority and exclusive security interest in all Collateral (other than Non-Operating Real Estate), (ii) the Agent's security interests in the Collateral (other than Non-Operating Real Estate) will at all times constitute first priority and exclusive liens on such Collateral, and (iii) the Company is, or will be at the time additional Collateral (other than Non-Operating Real Estate) is acquired by the Company, the absolute owner of such Collateral with full right to pledge, sell, transfer and create a security interest therein, free and clear of any and all claims or liens other than Permitted Encumbrances.

(b) Covenants. The Company, at its expense, agrees to forever warrant and defend the Collateral (other than Non-Operating Real Estate) from any and all claims and demands of any other person, other than holders of Permitted Encumbrances.

Section 5.4 Representations Regarding Accounts and Inventory. The Company represents and warrants to the Agent and the Lenders that:

(a) each Trade Account Receivable is based on an actual and bona fide sale and delivery of Inventory (other than Excluded Inventory) or rendition of services to customers, made by the Company in the ordinary course of its business;

(b) the Inventory being sold by the Company and the Trade Accounts Receivable created by such sales are the exclusive property of the Company and are not subject to any lien, consignment arrangement, encumbrance, security interest or financing statement whatsoever, other than Permitted Encumbrances;

(c) the invoices evidencing Trade Accounts Receivable are in the name of the Company;

(d) the applicable customers of the Company have accepted the Inventory or services giving rise to Trade Accounts Receivable, owe and are obligated to pay the full amounts stated in the invoices according to their terms, without dispute, offset, defense, counterclaim or

contra, except as disclosed by the Company to the Agent as and when required pursuant to Section 6.2(g) hereof;

(e) the Company's Inventory in which the Agent holds a first priority security interest is marketable in the ordinary course of the Company's business; and

(f) no Inventory has been produced by the Company in violation of the Fair Labor Standards Act (29 U.S.C. §201 et seq.), as amended, it being understood that without limiting any of the Agent's other rights hereunder, no breach of this representation shall be deemed to have occurred based on an alleged violation of this statute which is contested by the Company, unless and until the U.S. Department of Labor has made a determination that such violation has occurred.

Section 5.5 Covenants and Agreements Regarding Accounts and Inventory.

(a) The Company confirms to the Agent and the Lenders that all Taxes and fees relating to the Company's business, the Company's sales, and the Trade Accounts Receivable or Inventory (other than Excluded Inventory) relating thereto, are the Company's sole responsibility, and that same will be paid by the Company when due, subject to Section 6.2(d) hereof, and that none of said Taxes or fees represent a lien on or claim against the Trade Accounts Receivable, other than a Permitted Tax Lien.

(b) Except for Excluded Inventory subject to tolling arrangements entered into in the ordinary course of business, the Company agrees not to acquire any Inventory on a consignment basis, nor co-mingle its Inventory with any goods of its customers or any other person (whether pursuant to any bill and hold sale or otherwise).

(c) The Company agrees to maintain such books and records regarding Accounts and Inventory as the Agent reasonably may require and agrees that the books and records of the Company will reflect the Agent's interest in the Accounts and Inventory (other than Excluded Inventory). The Company's failure to maintain its books in the manner provided herein or to deliver to the Agent any of the foregoing information shall in no way affect, diminish, modify or otherwise limit the security interests granted to the Agent in the Accounts and Inventory (other than Excluded Inventory).

(d) The Company agrees to issue credit memoranda promptly after accepting returns or granting allowances, and to deliver to the Agent copies of such credit memoranda as and when required to do so under Section 6.2(g) hereof.

(e) The Company agrees to safeguard, protect and hold all Inventory in which the Agent holds a first priority security interest and to make no sale or other disposition thereof except in the ordinary course of the Company's business, and on commercially reasonable terms consistent with the Company's past practices. Notwithstanding the ordinary course of the Company's business and the Company's past practices, the Company agrees not to sell Inventory in which the Agent holds a first priority security interest on a consignment basis, nor retain any lien on or security interest in any Inventory sold by the Company. As to any sale or other disposition of Inventory in which the Agent holds a first priority security interest, the Agent shall have all of the rights of an unpaid seller, including stoppage in transit, replevin, rescission and

reclamation. The Company agrees to handle all Proceeds of sales of Inventory in which the Agent holds a first priority security interest in accordance with the provisions of Section 3.2 hereof.

Section 5.6 Covenants and Agreements Regarding Equipment.

(a) Maintenance of Equipment. The Company agrees to (i) maintain the Equipment in as good and substantial repair and condition as the Equipment is now maintained (or at the time that the Agent's security interest may attach to the Equipment), reasonable wear and tear excepted and except for Equipment that is worn out or obsolete, (ii) make any and all repairs and replacements when and where necessary and except for Equipment that is worn out or obsolete, and (iii) safeguard, protect and hold all Equipment in accordance with the terms hereof and subject to the Agent's security interest. The Equipment will only be used by the Company in the operation of its business and will not be sold or held for sale or lease, except as expressly provided in Section 5.6(b) below.

(b) Sales of Equipment. The Company may sell or lease Equipment from time to time, provided that in each such instance: (i) no Event of Default shall have occurred and remain outstanding at the time of such sale; (ii) the aggregate book value of the Equipment sold or leased (excluding (A) sales or leases of Equipment that is worn out or obsolete or no longer used or useful in the conduct of the Company's business and (B) sales or leases of Equipment in exchange for or in connection with the purchase or replacement of Equipment of reasonably equivalent or greater value) does not exceed \$250,000 in any fiscal year of the Company. Except as set forth above, the Company agrees not to sell, transfer, lease or otherwise dispose of any item of Equipment without the Required Lenders' prior written consent. Upon the sale, transfer, lease or other disposition of Equipment, the Agent's security interest in the Equipment shall, without break in continuity and without further formality or act, continue in, and attach to, all Proceeds; provided that the Company may retain such Proceeds and use the same (in accordance with the Budget, in the case of Proceeds other than Non-Operating Collections) so long as no Event of Default shall have occurred and remain outstanding. If an Event of Default shall have occurred and remain outstanding at the time of any sale of Equipment, such Proceeds shall not be commingled with the Company's other property, but shall be segregated, held by the Company in trust for the Agent as the Agent's property, for the benefit of the Lenders, and shall be promptly delivered by the Company to the Agent for application to the Obligations in such manner and such order as the Required Lenders may elect in the exercise of their reasonable business judgment. As to any such sale, transfer, lease or other disposition, the Agent shall have all of the rights of an unpaid seller, including stoppage in transit, replevin, rescission and reclamation.

Section 5.7 General Intangibles. The Company represents and warrants to the Agent and the Lenders that as of the date hereof, the Company possesses all General Intangibles necessary to conduct the Company's business as presently conducted. The Company agrees to maintain the Company's rights in, and the value of, all such General Intangibles, and to pay when due all payments required to maintain in effect any licensed rights. The Company shall provide the Agent with adequate notice of the acquisition of rights with respect to any additional Patents, Trademarks and Copyrights so that the Agent may, if it elects and for the benefit of the

Lenders and to the extent permitted under the documentation granting such rights or applicable law, perfect the Agent's security interest in such rights in a timely manner.

Section 5.8 [Intentionally deleted].

Section 5.9 Letter of Credit Rights. The Company represents and warrants to the Agent and the Lenders that as of the date hereof, the Company is not the beneficiary of any letter of credit. If the Company becomes a beneficiary under any letter of credit, the Company agrees to promptly notify the Agent, and upon request by the Agent, the Company agrees to either (a) cause the issuer of such letter of credit to consent to the assignment of the proceeds of such letter of credit to the Agent, for the benefit of the Lenders, pursuant to an agreement in form and substance satisfactory to the Agent, or (b) cause the issuer of such letter of credit to name the Agent, for the benefit of the Lenders, as the transferee beneficiary of such letter of credit.

Section 5.10 Real Estate. Upon the request of the Agent, the Company agrees to execute and deliver to the Agent from time to time a mortgage or deed of trust (as appropriate) in form and substance reasonably satisfactory to the Agent on any Operating Real Estate owned by the Company as the Agent shall require to obtain a valid first priority lien thereon, subject only to Permitted Encumbrances.

Section 5.11 Reference to Other DIP Financing Documents. Reference is hereby made to the other DIP Financing Documents for additional representations, covenants and other agreements of the Company regarding the Collateral covered by such DIP Financing Documents.

Section 5.12 Credit Balances; Additional Collateral.

(a) The rights and security interests granted to the Agent and the Lenders hereunder shall continue in full force and effect, notwithstanding the termination of this Financing Agreement or the fact that the Revolving Loan Account may from time to time be temporarily in a credit position, until the termination of this Financing Agreement and the full and final payment and satisfaction of the Obligations. Any reserves or balances to the credit of the Company (in the Revolving Loan Account or otherwise), and any other property or assets of the Company in the possession of the Agent or any Lender, shall be promptly returned to the Company upon receipt, provided that following the occurrence and during the continuance of an Event of Default, such reserves, balances or other property or assets may be held by the Agent or such Lender as Other Collateral, and applied in whole or partial satisfaction of such Obligations when due, subject to the terms of this Financing Agreement. The liens and security interests granted to the Agent, for the benefit of the Lenders, herein and any other lien or security interest which the Agent or the Lenders may have in any other assets of the Company secure payment and performance of all present and future Obligations.

(b) Notwithstanding the Agent's security interests in the Collateral, to the extent that the Obligations are now or hereafter secured by any assets or property other than the Collateral, or by the guaranty, endorsement, assets or property of any other person, the Agent shall have the right in its sole discretion to determine which rights, security, liens, security interests or remedies the Agent shall at any time pursue, foreclose upon, relinquish, subordinate, modify or take any other action with respect to, without in any way modifying or affecting any of

such rights, security, liens, security interests or remedies, or any of the Agent's or the Lenders' rights under this Financing Agreement.

ARTICLE 6
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 6.1 Initial Disclosure Representations and Warranties. The Company represents and warrants to the Agent and the Lenders that as of the date hereof:

(a) **Financial Condition.** All financial statements of the Company previously furnished to the Agent present fairly, in all material respects, the financial condition of the Company as of the date of such financial statements (subject, in the case of interim financial statements, to the absence of footnotes and year-end audit adjustments).

(b) **Organization Matters; Collateral Locations.** Schedule 6.1(B) attached hereto correctly and completely sets forth (i) the Company's exact name, as currently reflected by the records of the Company's State of formation, (ii) the Company's State of formation, (iii) the Company's federal employer identification number and State organization identification number (if any), and (iv) except as such Schedule may be amended or supplemented from time to time by notice hereunder from the Company to the Agent, the address of the Company's chief executive office and all locations of Collateral (other than Collateral in transit or in the Company's possession).

(c) **Power and Authority; Conflicts; Enforceability.**

(i) The Company has full power and authority to execute and deliver this Financing Agreement and the other DIP Financing Documents to which it is a party, and to perform all of the Company's obligations thereunder, subject to the Financing Order.

(ii) The execution and delivery by the Company of this Financing Agreement and the other DIP Financing Documents to which it is a party, and the performance of the Company's obligations thereunder, have been duly authorized by all necessary corporate or other relevant action, and do not (x) require any consent or approval of any director, shareholder, partner or member of the Company that has not been obtained, (y) violate any term, provision or covenant contained in the organizational documents of the Company (such as the certificate or articles of incorporation, certificate of origin, partnership agreement, by-laws or operating agreement), or (z) violate, or cause the Company to be in default under, any law, rule, regulation, order, judgment or award applicable to the Company or its assets.

(iii) This Financing Agreement and the other DIP Financing Documents to which the Company is a party constitute legal valid and binding obligations of the Company, enforceable in accordance with their respective terms, subject to the Financing Order and applicable bankruptcy, insolvency, moratorium, fraudulent transfer and other laws affecting creditors' rights generally, and subject to general principles of equity, regardless of whether considered in a proceeding at law or in equity.

(d) Schedules. Each of the Schedules attached to this Financing Agreement set forth a true, correct and complete description of the matter or matters covered thereby.

(e) Compliance with Laws. The Company and the Company's properties are in compliance with all federal, state and local acts, rules and regulations, and all orders of any federal, state or local legislative, administrative or judicial body or official, except as described on Schedule 6.1(E) attached hereto or to the extent the failure to so comply could not reasonably be expected to have a Material Adverse Effect. The Company has obtained and maintains all permits, approvals, authorizations and licenses necessary to conduct its business as presently conducted, except as described on Schedule 6.1(E) attached hereto or to the extent the failure to have such permits, approvals, authorizations or licenses could not reasonably be expected to have a Material Adverse Effect.

(f) Environmental Matters. Except as disclosed on Schedule 6.1(F) attached hereto:

(i) None of the operations of the Company are the subject of any federal, state or local investigation to determine whether any remedial action is needed to address the presence or disposal of any environmental pollution, hazardous material or environmental clean-up of the Operating Real Estate, except as could not reasonably be expected to have a Material Adverse Effect. No enforcement proceeding, complaint, summons, citation, notice, order, claim, litigation, investigation, letter or other communication from a federal, state or local authority has been filed against or delivered to the Company, regarding or involving any release of any environmental pollution or hazardous material on any Operating Real Estate.

(ii) The Company has no known contingent liability with respect to any release of any environmental pollution or hazardous material on any real property now or previously owned or operated by the Company or its predecessor entity, except as could not reasonably be expected to have a Material Adverse Effect.

(iii) The Company is in compliance with all environmental statutes, acts, rules, regulations and orders applicable to the operation of the Company's business, except to the extent that the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(g) Pending Liens. Except as disclosed on Schedule 1.1(B), there exist no judgment liens of any kind against any assets of the Company (excluding Real Estate other than Operating Real Estate) which are in effect in any jurisdiction nor any valid and non-avoidable consensual security interests in any assets of the Company which are senior in priority to the security interests granted to the Agent.

Section 6.2 Affirmative Covenants. Until the termination of this Financing Agreement and the full and final payment and satisfaction of the Obligations:

(a) Maintenance of Financial Records; Inspections. The Company agrees to maintain books and records pertaining to the Company's financial matters in such detail, form and scope as the Agent reasonably may require. The Company agrees that the Agent and/or any

agent designated by the Agent, may enter upon the Company's premises at any time during normal business hours, and from time to time, and upon reasonable notice if no Event of Default then exists, in order to (i) examine and inspect the books and records of the Company, and make copies thereof and take extracts therefrom, and (ii) verify, inspect and perform physical counts and other valuations of the Collateral and any and all records pertaining thereto. The Company irrevocably authorizes all accountants and third parties to disclose and deliver directly to the Agent and the Lenders, at the Company's expense, all financial statements and information, books, records, work papers and management reports generated by them or in their possession regarding the Company or the Collateral. All costs, fees and expenses incurred by the Agent in connection with such examinations and inspections shall constitute Out-of-Pocket Expenses for purposes of this Financing Agreement; provided, however, that the Company shall only be required to reimburse the Agent for appraisals of the Collateral as provided in Section 6.2(i).

(b) Further Assurances. The Company agrees to comply with the requirements of all state and federal laws in order to grant to the Agent, for the benefit of the Lenders, valid and perfected first priority security interests in the Collateral (other than Non-Operating Real Estate), subject only to the Permitted Encumbrances. The Agent is hereby authorized by the Company to file any financing statements, continuations and amendments covering the Collateral without the Company's signature in accordance with the provisions of the UCC. The Company hereby consents to and ratifies the filing of any financing statements covering the Collateral by the Agent on or prior to the Closing Date. The Company agrees to do whatever the Agent reasonably may request from time to time, by way of (i) filing notices of liens, financing statements, amendments, renewals and continuations thereof, (ii) cooperating with agents and employees of the Agent, (iii) keeping Collateral records, (iv) transferring proceeds of Collateral to the Agent's possession in accordance with the terms hereof and (v) performing such further acts as the Agent reasonably may require in order to effect the purposes of this Financing Agreement, including the execution of control agreements with respect to Depository Accounts and Investment Property.

(c) Insurance and Condemnation.

(i) Required Insurance. The Company agrees to maintain insurance on the Operating Real Estate, Equipment and Inventory under such policies of insurance, with such insurance companies, in such reasonable amounts and covering such insurable risks as are at all times reasonably satisfactory to the Agent (the "**Required Insurance**"). All policies covering the Inventory, Equipment and Real Estate are, subject to the rights of any holder of a Permitted Encumbrance having priority over the security interests of the Agent, to be made payable solely to the Agent, for the benefit of the Lenders, in case of loss, under a standard non contributory "mortgagee", "secured party" or "lender's loss payable" clause or endorsement, and are to contain such other provisions as the Agent reasonably may require to fully protect the Agent's interest in the Real Estate, Inventory and Equipment and to any payments to be made under such policies. Each loss payable endorsement in favor of the Agent shall provide (x) for not less than thirty (30) days prior written notice to the Agent of the exercise of any right of cancellation and (y) that the Agent's right to payment under any property insurance policy will not be invalidated by any act or neglect of, or any breach of warranty or condition by, the Company or any other party. If an Event of Default shall have occurred and remain outstanding, the

Agent, subject to the rights of any holder of a Permitted Encumbrance having priority over the security interests of the Agent, shall have the sole right, in the name of the Agent or the Company, to file claims under any insurance policies with respect to Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(ii) The Agent's Purchase of Insurance. Unless the Company provides the Agent with evidence of the Required Insurance in the manner set forth in Section 6.2(c)(i) above, the Agent may purchase insurance at the Company's expense to protect the Agent's interests in the Collateral. The insurance purchased by the Agent may, but need not, protect the Company's interests in the Collateral, and therefore such insurance may not pay any claim which the Company may make or any claim which is made against the Company in connection with the Collateral. The Company may later request that the Agent cancel any insurance purchased by the Agent, but only after providing the Agent with satisfactory evidence that the Company has the Required Insurance. If the Agent purchases insurance covering all or any portion of the Collateral, the Company shall be responsible for the costs of such insurance, including interest (at the applicable rate set forth hereunder) and other charges accruing on the purchase price therefor, until the effective date of the cancellation or the expiration of the insurance, and the Agent may charge all of such costs, interest and other charges to the Revolving Loan Account. The costs of the premiums of any insurance purchased by the Agent may exceed the costs of insurance which the Company may be able to purchase on its own. In the event that the Agent purchases insurance, the Agent will notify the Company of such purchase within thirty (30) days after the date of such purchase. If, within thirty (30) days after the date of receipt of such notice, the Company provides the Agent with proof that the Company had the Required Insurance as of the date on which the Agent purchased insurance and the Company has continued at all times thereafter to have the Required Insurance, then the Agent agrees to cancel the insurance purchased by the Agent and credit the Revolving Loan Account for the amount of all costs, interest and other charges associated with such insurance that the Agent previously charged to the Revolving Loan Account, and to reimburse the Company for any such amounts collected by the Agent.

(iii) Application of Insurance and Condemnation Proceeds. So long as no Default or Event of Default shall have occurred and remain outstanding as of the date of the Agent's receipt of (1) any Casualty Proceeds relating to Inventory and (2) following the Commitment Increase Effective Date, any Casualty Proceeds relating to Equipment or Real Estate;

(A) In the event of any loss or damage to any Inventory by condemnation, fire or other casualty, the Agent agrees to apply the Casualty Proceeds first to repay the outstanding Revolving Loans.

(B) In the event of any loss or damage to any item of Collateral other than Inventory by condemnation, fire or other casualty, if the Casualty Proceeds relating to such condemnation, fire or other casualty are less than or

equal to \$100,000, the Agent agrees to apply such Casualty Proceeds to repay the outstanding Revolving Loans.

(C) In the event of any loss or damage to any item of Equipment by condemnation, fire or other casualty, if the Casualty Proceeds relating to such condemnation, fire or other casualty exceed \$100,000, the Company may elect (by delivering written notice to the Agent within ten (10) Business Days following the Agent's receipt of such Casualty Proceeds) to replace or repair such item of Equipment. If the Company elects to replace or repair any item of Equipment, the Agent initially shall apply all such Casualty Proceeds to the outstanding Revolving Loans and will establish an Availability Reserve in an amount equal to such Casualty Proceeds. The Agent agrees to reduce this Availability Reserve dollar for dollar as and when payments are due under the contract(s) for the purchase of replacement Equipment or the repair of such item of Equipment. Upon the replacement or completion of repair of such item of Equipment, the Agent will eliminate any remaining Availability Reserve established hereunder.

(D) In the event of any loss or damage to any Real Estate leased by the Company by condemnation, fire or other casualty, the Company may use the Casualty Proceeds in the manner required or permitted by the lease agreement relating thereto. In the event of any loss or damage to any Real Estate owned by the Company by condemnation, fire or other casualty, if the Casualty Proceeds relating to such condemnation, fire or other casualty exceed \$100,000, and so long as the Company has sufficient business interruption insurance to replace the lost profits of the facilities affected by the condemnation, fire or other casualty, the Company may elect to repair or replace such Real Estate, subject to the following terms:

(1) If the Company reasonably determines that the Real Estate may be repaired to substantially the same condition of the Real Estate prior to the condemnation, fire or other casualty, the Company may elect to repair the Real Estate by delivering written notice to the Agent within thirty (30) days following the Agent's receipt of such Casualty Proceeds. The Agent initially shall apply all such Casualty Proceeds to the outstanding Revolving Loans and will establish an Availability Reserve in an amount equal to such Casualty Proceeds. The Company shall provide the Agent with a repair plan, the contract(s) for repair and a total budget certified by an independent third party experienced in construction costing. If such budget indicates that there are insufficient Casualty Proceeds to cover the full cost of repair of the Real Estate, the Company shall fund such deficiency before the Availability Reserve established hereunder shall be reduced. The Agent agrees to reduce this Availability Reserve dollar for dollar as and when payments are due under the contract(s) for repair. Upon completion of the repair of the Real Estate (as determined by the Agent in the exercise of its reasonable business

judgment), the Agent will eliminate any remaining Availability Reserve established hereunder.

(2) The Company may elect to replace the Real Estate owned by the Company only on terms and conditions satisfactory to the Required Lenders in their sole discretion.

Notwithstanding the foregoing, the Agent agrees to temporarily delay its application of Casualty Proceeds to Revolving Loans that are LIBOR Loans as reasonably necessary to avoid or minimize costs and expenses otherwise payable pursuant to Section 7.10 so long as no Default or Event of Default shall have occurred and be continuing. If a Default or an Event of Default shall then have occurred and remain outstanding as of the date of the Agent's receipt of any Casualty Proceeds, or if the Company does not or cannot elect to use the Casualty Proceeds in the manner set forth in paragraphs (C) or (D) above, the Agent may, subject to the rights of any holder of a Permitted Encumbrance having priority over the security interests of the Agent, apply the Casualty Proceeds to the payment of the Obligations in such manner and in such order as the Agent may elect in its sole discretion. Prior to the Commitment Increase Effective Date, upon the Agent's receipt of any Casualty Proceeds relating to Equipment or Real Estate, the Agent shall transfer such Casualty Proceeds as designated by the Company in accordance with Section 3.5(a).

(d) Payment of Taxes. The Company agrees to pay when due all Taxes lawfully levied, assessed or imposed upon the Company or the Collateral (including all sales taxes collected by the Company on behalf of the Company's customers in connection with sales of Inventory and all payroll taxes collected by the Company on behalf of the Company's employees), unless the Company is contesting such Taxes in good faith, by appropriate proceedings, and is maintaining adequate reserves for such Taxes in accordance with GAAP or such Taxes are not permitted to be paid currently under the Bankruptcy Code. Notwithstanding the foregoing, if a lien securing any Taxes is filed in any public office and such lien is not a Permitted Tax Lien or the enforcement of such lien is not subject to the automatic stay in bankruptcy then the Company shall pay all taxes secured by such lien immediately and remove such lien of record promptly. Pending the payment of such taxes and removal of such lien, the Agent may, at its election and without curing or waiving any Event of Default which may have occurred as a result thereof, (i) establish an Availability Reserve in the amount of such Taxes (or such lesser amount as the Agent shall deem appropriate in the exercise of its reasonable business judgment) or (ii) pay such taxes on behalf of the Company, and the amount paid by the Agent shall become an Obligation which is due and payable on demand by the Agent.

(e) Compliance With Laws. Except with respect to any non-compliance described in Schedule 6.1(E) hereto:

(i) The Company agrees to comply with all federal, state and local acts, rules and regulations, and all orders of any federal, state or local legislative, administrative or judicial body or official, if the failure to so comply could reasonably be expected to have a Material Adverse Effect, provided that the Company may contest any acts, rules, regulations, orders and directions of such bodies or officials in any reasonable manner which the Agent determines, in the exercise of its reasonable business judgment,

will not materially and adversely effect the Agent's or the Lenders' rights or priorities in the Collateral.

(ii) Without limiting the generality of the foregoing, the Company agrees to comply with all environmental statutes, acts, rules, regulations or orders, as presently existing or as adopted or amended in the future, applicable to the ownership and/or use of its real property and operation of its business, if the failure to so comply could reasonably be expected to have a Material Adverse Effect. The Company shall not be deemed to have breached any provision of this Section 6.2(e) if (x) the failure to comply with the requirements of this Section 6.2(e) resulted from good faith error or innocent omission, (y) the Company promptly commences and diligently pursues a cure of such breach and (z) such failure is cured within thirty (30) days following the Company's receipt of notice from the Agent of such failure, or if such breach cannot in good faith be cured within thirty (30) days following the Company's receipt of such notice, then such breach is cured within a reasonable time frame based on the extent and nature of the breach and the necessary remediation, and in conformity with any applicable consent order, consensual agreement or applicable law.

(f) Notices Concerning Environmental, Employee Benefit and Pension Matters. The Company agrees to notify the Agent in writing of:

(i) any expenditure (actual or anticipated) by the Company in excess of \$100,000 for environmental clean up, environmental compliance or environmental testing and the impact of said expenses on the Company's working capital;

(ii) the Company's receipt of notice from any local, state or federal authority advising the Company of any environmental liability (real or potential) arising from the Company's operations, its premises, its waste disposal practices, or waste disposal sites used by the Company;

(iii) the Company's receipt of notice from any governmental agency or any sponsor of any "multiemployer plan" (as that term is defined in ERISA) to which the Company has contributed, relating to any of the events described in Section 9.1(g) hereof; and

(iv) the Company's receipt of notice of any alleged violation of the Fair Labor Standards Act (29 U.S.C. §201 et seq.) as amended, and of any determination made by the U.S. Department of Labor with respect thereto.

The Company agrees to provide the Agent promptly with copies of all such notices and other information pertaining to any matter set forth above if the Agent so requests. For avoidance of doubt, the Agent shall be deemed to have been notified of all matters described on any of the Schedules attached hereto.

(g) Collateral Reporting and Information. (i) The Company agrees to furnish to the Agent:

(A) On or before the 15th day of each month (but more frequently upon the Agent's reasonable request), a borrowing base certificate in form and substance satisfactory to the Agent, certified by a Responsible Officer of the Company (or any other authorized officer satisfactory to the Agent), together with such confirmatory schedules of Trade Accounts Receivable and Inventory constituting Collateral (in form and substance satisfactory to the Agent) as the Agent reasonably may request. The Agent, in its sole discretion, may permit the Company to access CIT's System for the purpose (in addition to those set forth in Section 3.7) of completing and submitting borrowing base certificates when required hereunder.

(B) On or before the 20th day of each month (but more frequently upon the Agent's reasonable request), a detailed and summary aging report of Trade Accounts Receivable existing as of the last day of the preceding month, a roll-forward of Trade Accounts Receivable from the first day of the preceding month through the last day of the preceding month, and a summary of Inventory as of the last day of the preceding month, all in such form as the Agent reasonably shall require, certified by a Responsible Officer of the Company (or any other authorized officer satisfactory to the Agent), together with (1) a reconciliation, as of the last day of the preceding month, of the Company's Trade Accounts Receivable aging report to the Company's general ledger and applicable borrowing base certificate delivered by the Company to the Agent, and (2) if required by the Agent, such other information sufficient to allow the Agent to update the amount of Eligible Accounts Receivable and Eligible Inventory.

(C) On or before the 20th day of each month (but more frequently upon the Agent's reasonable request), an aged trial balance of all the Company's accounts payable and the total balance of accrued payables as of the last day of the preceding month.

(D) On a daily basis, a summary of cash collections and sales of refined products for the Company for the prior day, in such form as the Agent reasonably shall require.

(E) No later than 5 p.m. on Tuesday of each calendar week, a reconciliation report of Inventory on hand (for Inventory in which the Agent holds a first priority security interest), a production report for the prior week and a report of the quantities of sales of unrefined products (including the estimated market value thereof) for the prior week, each in such form as the Agent reasonably shall require.

(F) Prompt written disclosure of (1) (a) all matters adversely affecting the value, enforceability or collectibility of the Trade Accounts Receivable of the Company and (b) all customer disputes, offsets, defenses, counterclaims, returns, rejections and all reclaimed or repossessed merchandise or goods, in an aggregate amount in excess of \$50,000 (excluding disputes or offsets arising from adjustments between interim and final invoices in the ordinary

course of business) and (2) all matters adversely affecting the value or marketability of the Inventory, all in such detail and format as the Agent reasonably may require, provided that to the extent that any such matter could not reasonably be expected to have a Material Adverse Effect, the Company may disclose such matter to the Agent when the Company provides the Agent with the borrowing base certificate described in clause (i) above.

(G) Prior written notice of any change in the location of any Collateral to a location not owned or leased by the Company and any material change in type, quantity, quality or mix of the Inventory in which the Agent holds a first priority security interest.

(H) From time to time and during normal business hours, access to the Company's computers, electronic media, software programs (including any electronic records, contracts and signatures) and such other documentation and information relating to the Trade Accounts Receivable, Inventory and other Collateral as the Agent reasonably may require.

(ii) The Company may deliver to the Agent any borrowing base certificate, collateral report or other material that the Company is required to deliver to the Agent under clauses (A), (B), (C) and (D) of Section 6.2(g)(i) by e-mail or other electronic transmission (an "**Electronic Transmission**"), subject to the following terms:

(A) Each Electronic Transmission must be sent by a Responsible Officer of the Company (or any other authorized officer satisfactory to the Agent), and must be addressed to the loan officer and the collateral analyst of the Agent that handle the Company's account, as designated by the Agent from time to time. If any Electronic Transmission is returned to the sender as undeliverable, the material included in such Electronic Transmission must be delivered to the intended recipient in the manner required by Section 11.6 hereof.

(B) Each certificate, collateral report or other material contained in an Electronic Transmission must be in a "pdf" or other imaging format and, to the extent that such material must be certified by an officer of the Company under this Section 6.2(g), must contain the signature of the officer submitting the Electronic Transmission. As provided in Section 11.6, any signature on a certificate, collateral report or other material contained in an Electronic Transmission shall constitute a valid signature for purposes hereof. The Agent may rely upon, and assume the authenticity of, any such signature, and any material containing such signature shall constitute an "authenticated" record for purposes of the Uniform Commercial Code and shall satisfy the requirements of any applicable statute of frauds.

(C) Each Electronic Transmission must contain the name and title of the officer of the Company transmitting the Electronic Transmission, and shall include following text in the body of the Electronic Transmission:

“Pursuant to the Financing Agreement dated _____, 2005 among Asarco LLC (the “**Company**”), the lenders that are parties thereto (the “**Lenders**”) and The CIT Group/Business Credit, Inc., as Agent for the Lenders (the “**Agent**”), the undersigned _____ [*title of submitting officer*] of the Company hereby delivers to the Agent the Company’s _____ [*describe submitted reports*]. The Company represents and warrants to the Agent and the Lenders that the materials included in this Electronic Transmission are true, correct, and complete in all material respects. The name of the officer of the Company set forth in this e-mail constitutes the signature of such officer, and this e-mail shall constitute an authenticated record of the Company.”

(D) The Company agrees to maintain the original versions of all certificates, collateral reports and other materials delivered to the Agent by means of an Electronic Transmission and agrees to furnish to the Agent such original versions within five (5) Business Days of the Agent’s request for such materials, signed and certified (to the extent required hereunder) by the officer submitting the Electronic Transmission or another Responsible Officer of the Company.

(iii) The Company hereby authorizes the Agent to regard the Company’s printed name or rubber stamp signature on assignment materials transmitted to the Agent pursuant to Section 6.2(g)(ii) or invoices as the equivalent of a manual signature by one of the Company's authorized officers or agents. The Company's failure to promptly deliver to the Agent any schedule, report, statement or other information set forth in this Section 6.2(g) shall not affect, diminish, modify or otherwise limit the Agent’s security interests in the Collateral.

(h) Financial Reporting. The Company agrees to furnish to the Agent and the Lenders:

(i) within one hundred twenty (120) days after the end of each fiscal year of the Company, a Company Balance Sheet as at the close of such year, and statements of profit and loss and cash flow of the Company for such year, audited by independent public accountants selected by the Company and satisfactory to the Agent and an unaudited Consolidated Balance Sheet as at the close of such year, together with (A) the unqualified opinion of the accountants preparing such financial statements and (B) if requested by the Agent, such accountants’ management practice letter;

(ii) within thirty (30) days after the end of each month, (A) a Company Balance Sheet as at the end of such month, (B) statements of profit and loss and cash flow of the Company for such month and for the period commencing on the first day of

the current fiscal year through the end of such month, and (C) comparative statements of profit and loss and cash flow of the Company for the same month and same fiscal year-to-date period in the prior fiscal year, certified by a Responsible Officer of the Company (or any other authorized officer satisfactory to the Agent);

(iii) as and when filed by the Company, copies of all (A) financial reports, registration statements and other documents filed by the Company with the U.S. Securities and Exchange Commission, and (B) annual reports filed pursuant to ERISA in connection with each benefit plan of the Company subject to ERISA;

(iv) prior to the beginning of each fiscal year of the Company, monthly projections of the Company's balance sheet, and statements of profits and loss and cash flow of the Company, as well as monthly projected Net Availability for the Company for such fiscal year; and

(v) on or before the third Business Day of each week, (A) a report in form acceptable to the Agent setting forth any variances in actual cash receipts and expenditures (other than expenditures made by the Company from funds not required by the terms of this Financing Agreement to be on deposit in a Depository Account) from those projected in the Budget, (B) an update to the Budget setting forth any changes therein reasonably anticipated by the Company (it being understood that no such changes shall become part of the Budget unless approved by the Agent in writing) and (C) a report in form acceptable to the Agent setting forth expenditures in excess of \$50,000 made by the Company from Excluded Collateral or other funds not required by the terms of this Financing Agreement to be on deposit in a Depository Account and not otherwise covered by the Budget.

Each financial statement which the Company is required to submit pursuant to clauses (i) and (ii) above must be accompanied by an officer's certificate substantially in the form set forth on Exhibit C attached hereto, signed by a Responsible Officer of the Company (or any other authorized officer satisfactory to the Agent). In addition, should the Company modify its accounting principles and procedures from those in effect on the Closing Date, the Company agrees to prepare and deliver to the Agent and the Lenders statements of reconciliation in form and substance reasonably satisfactory to the Agent.

(i) Asset Appraisals. From time to time upon the request of the Agent, the Company agrees to permit the Agent to perform appraisals of the Silver Bell Equity Interest and the Company's Inventory and Equipment. The Company agrees to reimburse the Agent for the actual costs and expenses relating to (i) up to two (2) appraisals of the Silver Bell Equity Interest, Inventory or Equipment in any twelve month period so long as no Event of Default shall have occurred and remain outstanding, provided that the second appraisal in any twelve month period will only be conducted if so recommended by the Collateral Consultant, and (ii) all such appraisals performed while an Event of Default shall remain outstanding. All appraisals shall be performed by qualified appraisers selected by the Agent. To the extent that the Company is required by this Section 6.2(i) to reimburse the Agent for the Agent's costs and expenses relating to appraisals, such costs and expenses shall constitute Out-of-Pocket Expenses.

(j) Business Qualification. The Company agrees to qualify to do business, and to remain qualified to do business and in good standing, in each jurisdiction where the failure to so qualify, or to remain qualified or in good standing, could reasonably be expected to have a Material Adverse Effect.

(k) Anti-Money Laundering and Terrorism Regulations. The Company agrees to comply with all applicable anti-money laundering and terrorism laws, regulations and executive orders in effect from time to time (including, without limitation, the USA Patriot Act (Pub. L. No. 107-56)). The Company also agrees to ensure that no person who owns a controlling interest in or otherwise controls the Company is a person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (issued September 23, 2001) or any other similar Executive Order. The Company acknowledges that the Agent's and each Lender's performance hereunder is subject to compliance with all such laws, regulations and executive orders, and in furtherance of the foregoing, the Company agrees to provide to the Agent and the Lenders all information about the Company's ownership, officers, directors, customers and business structure as the Agent and the Lenders reasonably may require to comply with, such laws, regulations and executive orders.

(l) Compliance with Orders. The Company agrees to comply with the Financing Order and all other orders entered by the Court in the Chapter 11 Case having applicability to the Company. The Company shall provide, or cause its counsel in the Chapter 11 Case to provide, the Agent's and each Lender's counsel with copies of all pleadings, motions, reports, applications and other papers filed by the Company with the Court or the U.S. Trustee. The Company shall include counsel for Agent on any "Special Notice List" or other similar list of parties to be served with papers in the Chapter 11 Case.

(m) Utility Deposits. To the extent the Company has made or makes any deposits for the benefit of utility companies or any other Person, the Company acknowledges that the Agent, for itself and for the pro rata benefit of the Lenders, has been granted a first priority perfected security interest in such deposits, subject to any right of set-off by such utility company or Person. The Company shall not use or transfer such deposits, and the Company hereby assigns and sets over all such deposits to the Agent, for itself and for the pro rata benefit of the Lenders, subject to any right of set-off by such utility company or Person.

(n) Payment of Administrative Expenses. The Company agrees to make, pursuant to the Budget, all payments of its (i) post-petition operating costs and expenses as and when due and (ii) administrative costs and expenses as and when such administrative costs and expenses are due and payable, including but not limited to allowed Professional Fees.

(o) Cash Management System. The Company shall establish a cash management system reasonably acceptable to the Agent, and all collections with respect to Trade Accounts Receivable and other Proceeds of Collateral (other than Non-Operating Collections) shall be applied daily in payment of the Revolving Loans in accordance with Section 3.5, subject to the Company's right to reborrow under the Revolving Line of Credit as set forth in this Agreement. Subject to the Agent receiving Depository Account Control Agreements from all of the Company's depository banks at which Depository Accounts are currently maintained, it is

understood that the cash management system in place on the Closing Date is reasonably acceptable to the Agent.

(p) Accountants. The Company shall engage McGladery and Pullen, LLP or another nationally recognized firm of certified public accountants which is reasonably acceptable to the Agent to conduct the audit of the Company's fiscal 2006 annual financial statements.

Section 6.3 Financial Covenants. Until termination of this Financing Agreement and the full and final payment and satisfaction of all Obligations, the Company agrees to:

(a) Minimum Net Availability. Maintain Net Availability of not less than \$10,000,000.00 at all times.

(b) Capital Expenditures. Not contract for, purchase, make expenditures for, lease pursuant to a Capital Lease, incur Indebtedness secured by Purchase Money Liens or otherwise incur obligations with respect to Capital Expenditures (whether subject to a security interest or otherwise) during any fiscal year of the Company in the aggregate amount in excess of:

(A) \$45,000,000 for the fiscal year ending December 31, 2006;
and

(B) \$45,000,000 for the fiscal year ending December 31, 2007,
and for each fiscal year thereafter.

The aggregate amount of payments during any fiscal year of the Company in connection with Capital Leases and Indebtedness secured by Purchase Money Liens pursuant to this Section 6.3(b) shall not exceed thirty percent (30%) of the amount specified in subsections (A) or (B) above, as applicable.

Section 6.4 Negative Covenants. Until termination of this Financing Agreement and full and final payment and satisfaction of all Obligations, the Company agrees not to:

(a) Liens and Encumbrances. Mortgage, assign, pledge, transfer or otherwise permit any lien, charge, security interest, encumbrance or judgment (whether as a result of a purchase money or title retention transaction, or other security interest, or otherwise) to exist on any of the Collateral (other than Non-Operating Real Estate) whether now owned or hereafter acquired, except for the Permitted Encumbrances.

(b) Indebtedness. Incur or create any Indebtedness other than the Permitted Indebtedness.

(c) Sale of Assets. Sell, lease, assign, transfer or otherwise dispose of Collateral, except (i) sales of Inventory in the ordinary course of business, and (ii) sales of Equipment or Real Estate that is worn out or obsolete or no longer used or useful in the conduct of the Company's business, (iii) sales of Equipment in exchange for or in connection with the purchase or replacement of Equipment of reasonably equivalent or greater value, and (iv) as

otherwise permitted by Section 5.6 or otherwise specifically permitted by this Financing Agreement.

(d) Corporate Change. (i) Merge or consolidate with any other entity, (ii) change its name, (iii) change its structure or organizational form, or reincorporate or reorganize in a new jurisdiction, (iv) enter into or engage in any operation or activity materially different from that presently being conducted by the Company; provided that the Company may change its name or jurisdiction of organization so long as the Company provides the Agent with thirty (30) days prior written notice thereof and the Company executes and delivers to the Agent, prior to making such change, all documents and agreements reasonably required by the Agent in order to ensure that the liens and security interests granted to the Agent, for the benefit of the Lenders, hereunder continue in effect without any break or lapse in perfection.

(e) Guaranty Obligations. Assume, guarantee, endorse, or otherwise become liable upon the obligations of any person, firm, entity or corporation, except by the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business or as described on Schedule 6.4(E) attached hereto (such schedule to be deemed to include any refinancings (but not increases) of obligations described therein).

(f) Dividends and Distributions. Declare or pay any dividend or distribution of any kind on, or purchase, acquire, redeem or retire, any of its equity interests (of any class or type whatsoever), whether now or hereafter issued and outstanding, other than Permitted Distributions.

(g) Investments. Directly or indirectly, (i) create any new subsidiary, or (ii) make any advance or loan to, or any investment in (each of the foregoing, an “**Investment**”), any Person, other than Investments made from funds not required by the terms of this Financing Agreement to be on deposit in a Depository Account, or (iii) acquire all or substantially all of the assets of, or any capital stock or any equity interests in, any Person, other than (w) travel and other like advances to officers and employees in the ordinary course of business, (x) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business, (y) Permitted Investments, and (z) Investments of the Company in stock of subsidiaries existing as of the Closing Date or other Investments as of the Closing Date which are described in Schedule 6.4(G) attached hereto.

(h) Related Party Transactions. Except for transactions described on Schedule 6.4(H) attached hereto, enter into any transaction, including, without limitation, any purchase, sale, lease, loan or exchange of property, with any shareholder, officer, director, parent (direct or indirect), subsidiary (direct or indirect) or other Affiliate of the Company, unless (i) such transaction otherwise complies with the provisions of this Financing Agreement, and (ii) such transaction is in the ordinary course of business and pursuant to the reasonable requirements of the Company and upon fair and reasonable terms, no less favorable to the Company than the Company could obtain in a comparable arms length transaction with an unrelated third party, and (iii) no Event of Default shall have occurred and remain outstanding at the time such transaction occurs, or would occur immediately after giving effect to such transaction.

(i) Payments on Subordinated Debt. Make any payment of the principal of, or interest on, any Subordinated Debt, or purchase, acquire or redeem any of the Subordinated Debt, unless (i) such payment, purchase, acquisition or redemption is expressly permitted by the terms of the applicable Subordination Agreement and (ii) no Default or Event of Default shall have occurred and remain outstanding on the date on which such payment or transaction occurs, or would occur as a result thereof.

(j) Prohibited Uses of Proceeds. Use the proceeds of any Revolving Loan made under this Financing Agreement, directly or indirectly, in violation of any applicable law or regulation, including without limitation Regulations T, U or X of the Board of Governors of the Federal Reserve System as from time to time in effect (and any successor regulation or official interpretation of such Board), or to purchase or carry any “margin stock”, as defined in Regulations U and X, or any “margin security”, “marginable OTC stock” or “foreign margin stock” within the meaning of Regulation T, U or X.

(k) Payment of Claims. Make any payment of principal or interest on account of any Claim against the Company or any of its subsidiaries that arose prior to the Petition Date, other than rent under leases in existence on the Petition Date, Claims permitted to be paid by the Budget, “first day orders” to the extent approved by order of the Court, environmental Claims with respect to Real Estate owned by the Company, any other payments authorized by the Court and any other payments from funds not required by the terms of this Financing Agreement to be on deposit in a Depository Account.

(l) Filing of Motions and Applications. Apply to the Court for authority to (i) take any action that is prohibited by the terms of any of the DIP Financing Documents, (ii) refrain from taking any action that is required to be taken by the DIP Financing Documents or the Financing Order, (iii) permit any Indebtedness or Claim to be *pari passu* with or senior to any of the Obligations or (iv) use any cash Proceeds of the Collateral other than in payment of the Obligations or as otherwise expressly authorized herein or by the Court.

(m) Modification to Financing Order. Seek or consent to any amendment, supplement or any modification of any of the terms of the Financing Order.

(n) Advances and Transfers to Subsidiaries. Notwithstanding anything in this Agreement to the contrary, make any loans, advances or transfers to any subsidiary of the Company other than loans, advances or transfers made by the Company (i) from funds not required by the terms of this Financing Agreement to be on deposit in a Depository Account, (ii) as ordered by the Court, or (iii) as reimbursement for services provided to the Company by employees of ASARCO Consulting, Inc., or (iv) constituting Permitted Investments.

(o) Budget. (i) Make or commit or agree to make (other than from funds not required by the terms of this Financing Agreement to be on deposit in a Depository Account), any expenditure (other than a Capital Expenditure) in any given week which would result in the total expenditures (excluding expenditures from funds not required by the terms of this Financing Agreement to be on deposit in a Depository Account and excluding Capital Expenditures) for such week and the preceding three weeks (or the then elapsed number of weeks in the case of the first three weeks of the Budget) on a cumulative basis exceeding the

total expenditures (other than Capital Expenditures) provided in the Budget for the applicable rolling four week (or then elapsed less than four week) period, subject to variances (not including any such variances to the extent resulting from expenditures expressly permitted herein) not to exceed 15% of such aggregate expenditures (other than Capital Expenditures); or (ii) make or commit or agree to make (other than from funds not required by the terms of this Financing Agreement to be on deposit in a Depository Account), any Capital Expenditure in any given week which would result in the total Capital Expenditures (excluding Capital Expenditures from funds not required by the terms of this Financing Agreement to be on deposit in a Depository Account) for such week and the preceding five weeks (or the then elapsed number of weeks in the case of the first five weeks of the Budget) on a cumulative basis exceeding the total Capital Expenditures provided in the Budget for the applicable rolling six week (or then elapsed less than six week) period, subject to variances (not including any such variances to the extent resulting from expenditures expressly permitted herein) not to exceed 15% of such aggregate Capital Expenditures.

ARTICLE 7

INTEREST, FEES AND EXPENSES

Section 7.1 Interest on Revolving Loans. Interest on the outstanding principal balance of the Revolving Loans that are Chase Bank Rate Loans shall be due and payable monthly on the first day of each month and shall accrue at a rate per annum equal to the lesser of (a) the Applicable Margin plus the Chase Bank Rate or (b) the Maximum Rate, calculated on the average net principal balance of such Revolving Loans at the close of each day during the immediately preceding month, as reflected by CIT's System. On each Revolving Loan that is a LIBOR Loan, interest shall be due and payable on each LIBOR Interest Payment Date and shall accrue at a rate per annum equal to the Applicable Margin plus the applicable LIBOR on the outstanding principal balance of such LIBOR Loan. In the event of any change in said Chase Bank Rate, the rate set forth in the first sentence of this Section 7.2(a) shall change, effective as of the date of such change, so as to remain equal to the Applicable Margin plus the new Chase Bank Rate. In connection with any increase in the Total Commitment in excess of \$75,000,000, if the Agent is unable to syndicate the facility to its desired hold level (such amount to be determined by the Agent at the time of syndication), each of the foregoing Applicable Margins may be adjusted upwards by not more than 75 basis points, as contemplated by the definition of Applicable Margin. All interest rates shall be calculated based on a 360 day year and actual days elapsed.

Section 7.2 Default Interest Rate. Upon the occurrence of an Event of Default, (a) provided that the Agent has given the Company written notice of such Event of Default (other than an Event of Default described in Section 9.1(d) of this Financing Agreement, for which no written notice shall be required), all Obligations shall bear interest at the Default Rate of Interest until such Event of Default is waived, and (b) at the Agent's or the Required Lenders' election at any time thereafter, interest on each outstanding LIBOR Loan shall be due and payable on the first day of each month, notwithstanding the Interest Period with respect thereto.

Section 7.3 Fees and Expenses Relating to Letters of Credit.

(a) Letter of Credit Guaranty Fee. In consideration of the issuance of any Letter of Credit Guaranty by the Agent or other assistance of the Agent and the Lenders in obtaining Letters of Credit pursuant to Article 4 hereof, the Company agrees to pay to the Agent, for the ratable benefit of the Lenders, a Letter of Credit Guaranty Fee equal to two and one-half percent (2.50%) per annum on the face amount of each Letter of Credit. All Letter of Credit Guaranty Fees shall be due and payable upon issuance thereof and thereafter monthly on the first day of each month.

(b) Charges of Issuing Bank. The Company agrees to reimburse the Agent for any and all charges, fees, commissions, costs and expenses charged to the Agent for the Company's account by an Issuing Bank in connection with, or arising out of, Letters of Credit or out of transactions relating thereto, when charged to or paid by the Agent, or as may be due upon any termination of this Financing Agreement.

Section 7.4 Out-of-Pocket Expenses. The Company agrees to reimburse the Agent and the Lenders for all Out-of-Pocket Expenses promptly upon notification by the Agent to the Company that such amounts have been charged to or paid by the Agent or the Lenders.

Section 7.5 Line of Credit Fee. On the first day of each month, commencing on November 1, 2005, the Company agrees to pay to the Agent, for the ratable benefit of the Lenders, the Line of Credit Fee for the preceding month.

Section 7.6 Initial Loan Facility Fee; Underwriting Fee; Application of Deposits and Commitment Fee. To induce the Agent and the Lenders to enter into this Financing Agreement and to extend to the Company the Revolving Line of Credit, the Company agrees to pay to the Agent, (a) for the ratable benefit of the Lenders, an initial Loan Facility Fee in the amount of \$750,000.00; provided, however, that if the Court grants interim approval for only a portion of the Revolving Line of Credit, such fee will be payable in an amount equal to 1.00% of the portion so approved, and the remainder will be payable upon final approval being obtained; and (b) for the sole benefit of CIT, an initial Underwriting Fee in the amount of \$187,500.00; provided, however, that if the Court grants interim approval for only a portion of the Revolving Line of Credit, such fee will be payable in an amount equal to 0.25% of the portion so approved, and the remainder will be payable upon final approval being obtained, each of which shall be fully earned upon the execution, delivery and effectiveness of this Financing Agreement by and with respect to the Agent, the initial Lenders hereunder and the Company. On the Closing Date, the Agent shall credit the work fee and the unused portion of the \$200,000.00 good faith deposit paid by the Company to the Agent under the Commitment Letter to the Loan Facility Fee, and shall charge the Revolving Loan Account for the balance of the Loan Facility Fee concurrently with the Lenders' initial disbursement of loans hereunder.

Section 7.7 Supplemental Loan Facility Fee and Underwriting Fee. In connection with any increase in the size of the Revolving Line of Credit in excess of \$75,000,000, the Company agrees to pay to the Agent, (a) for the ratable benefit of the Lenders, a supplemental Loan Facility Fee in the amount of 1% of the amount of such increase and (b) for the sole benefit of CIT, a supplemental Underwriting Fee in the amount of 0.25% of the amount of such increase,

each of which shall be fully earned and payable upon the effectiveness of such increase; provided that in the event that CIT is unable to syndicate the DIP Facility to its desired hold level, the Loan Facility Fee may be adjusted upwards by not more than 75 basis points on the entire Revolving Line of Credit and will be payable on the day of such increase.

Section 7.8 Standard Operational Fees. In addition to the Out-of-Pocket Expenses incurred by the Agent in connection with any action taken under Section 6.2(a) hereof (but without duplication), the Company agrees to pay to the Agent, for its own account, (a) the Agent's standard charges for any employee of the Agent used to conduct any of the examinations, verifications, inspections, physical counts and other valuations described in Section 6.2(a) hereof (currently \$850 per person, per day), provided, however, that the Company shall only be required to reimburse the Agent for appraisals of the Collateral as provided in Section 6.2(i), and (b) the Agent's standard charges for each wire transfer made by the Agent to or for the benefit of the Company (currently \$30) and for Dunn and Bradstreet searches conducted by the Agent for the Company's account (currently \$65), provided that such standard charges may be increased by the Agent from time to time. Such charges shall be due and payable in accordance with the Agent's standard practices, as in effect from time to time.

Section 7.9 LIBOR Loans.

(a) **Conditions Applicable to LIBOR Loans.** The Company may elect to use LIBOR as to any Revolving Loans, convert any Chase Bank Rate Loan to a new LIBOR Loan or continue any existing LIBOR Loan as a new LIBOR Loan on the last day of the Interest Period with respect to such existing LIBOR Loan, so long as:

(i) no Default or Event of Default shall have occurred and remain outstanding on the date on which such new LIBOR Loan is requested and on the first day of the Interest Period for such new LIBOR Loan;

(ii) the Company requests the new LIBOR Loan no later than three (3) Business Days preceding the first day of the Interest Period for such new LIBOR Loan (or three (3) Business Days prior to the expiration of any Interest Period, in the case of a continuation of an existing LIBOR Loan);

(iii) if the Agent requests written confirmation of any new LIBOR Loan from the Company, the Company shall have signed and returned to the Agent any such confirmation on or prior to first day of the Interest Period for such new LIBOR Loan; and

(iv) with respect to the Interest Period selected by the Company for such new LIBOR Loan, (A) either (1) JPMorgan Chase Bank, N.A. provides a LIBOR quote for such Interest Period or the Agent otherwise determines the LIBOR for such Interest Period, as provided in the definition of LIBOR, or (2) the LIBOR for such Interest Period as quoted by JPMorgan Chase Bank, N.A. or as determined by the Agent adequately and fairly reflects the cost of maintaining or funding the Lenders' loans bearing interest at LIBOR for such Interest Period, and (B) such Interest Period ends on or before the Termination Date.

Any LIBOR election must be for at least \$1,000,000 and if greater, in integral multiples of \$1,000,000, and there shall be no more than five (5) LIBOR Loans outstanding at one time. Elections for LIBOR Loans shall be irrevocable once made. If any condition for a LIBOR election is not satisfied, then the requested new loan (or continuation of an existing LIBOR Loan) shall be made to the Company as a Chase Bank Rate Loan.

(b) Restrictions Affecting the Making or Funding of LIBOR Loans. Notwithstanding any other provision of this Financing Agreement to the contrary, if any law, regulation, treaty or directive, or any amendment thereto or change in the interpretation or application thereof, shall make it unlawful for any Lender to make or maintain any LIBOR Loan, then (i) such LIBOR Loan shall convert automatically to a Chase Bank Rate Loan at the end of the applicable Interest Period, or such earlier date as may be required by such law, regulation, treaty or directive, and (ii) the obligation of the Agent or the Lenders thereafter to make or continue LIBOR Loans and to convert Chase Bank Rate Loans into LIBOR Loans hereunder shall be suspended until the Agent determines that it is no longer unlawful for any Lender to make and maintain LIBOR Loans as contemplated herein. In addition, in the event that, by reason of any Regulatory Change, any Lender either (x) incurs any material additional costs based on or measured by the excess above a specified level of the amount of a category of deposits or other liabilities of such Lender which includes deposits by reference to which the interest rate on LIBOR Loans is determined hereunder, or a category of extensions of credit or other assets of such Lender which includes LIBOR Loans, or (y) becomes subject to any material restrictions on the amount of such a category of liabilities or assets which such Lender may hold, then if the Agent so elects by notice to the Company, the obligations of the Agent and the Lenders thereafter to make or continue LIBOR Loans and to convert Chase Bank Rate Loans into LIBOR Loans hereunder shall be suspended until such Regulatory Change ceases to be in effect.

(c) Inability to Determine LIBOR. Notwithstanding any other provision of this Financing Agreement to the contrary, if the Agent determines in the exercise of its reasonable business judgment (which determination shall be conclusive and binding upon the Company) that by reason of circumstances affecting the interbank LIBOR market, adequate and reasonable means do not exist for ascertaining LIBOR applicable to an Interest Period with respect to any election of a new LIBOR Loan, the Agent shall give written notice of such determination to the Company prior to the effective date of such election. Upon receipt of such notice, the Company may either cancel the Company's request for such new LIBOR Loan or elect to have the requested LIBOR Loan made as a Chase Bank Rate Loan. Until such notice has been withdrawn by the Agent, the obligations of the Agent and the Lenders thereafter to make or continue LIBOR Loans and to convert Chase Bank Rate Loans into LIBOR Loans hereunder shall be suspended until the Agent determines that adequate and reasonable means again exist for ascertaining LIBOR applicable to an Interest Period with respect to any election of a new LIBOR Loan.

(d) Compensation for Costs. The Company hereby agrees to pay to the Agent, for the benefit of the Lenders, on demand, any additional amounts necessary to compensate the Lenders for any costs incurred by the Lenders in making any conversions from LIBOR Loans to Chase Bank Rate Loans in accordance with this Section 7.9, including, without limitation, breakage costs provided for in Section 7.10 of this Financing Agreement.

(e) Loan Participants. For purposes of this Section 7.9, the term “Lender” shall include any financial institution that purchases from any Lender a participation in the loans made by such Lender to the Company hereunder.

Section 7.10 LIBOR Breakage Costs and Fees. In the event that the Company (a) pays all or any part of the principal amount of a LIBOR Loan on a date prior to the last day of an Interest Period for such LIBOR Loan, (b) fails to borrow a LIBOR Loan, or fails to convert a Chase Bank Rate Loan to a LIBOR Loan, on the date for such borrowing or conversion specified in the relevant request to the Agent, or (c) fails to pay to the Agent the principal of, or interest on, any LIBOR Loan when due, the Company agrees to pay to the Agent and each Lender (without duplication), on demand, such amount as shall reimburse the Agent or any Lender for any actual loss, cost or expense that the Agent or any Lender may sustain or incur as a result of such event (including, without limitation, any interest or fees payable by the Agent or any Lender to lenders or depositors of funds obtained by the Agent or any Lender in order to make or maintain any LIBOR Loans under this Financing Agreement). The determination by the Agent or any Lender of the amount of any such loss, cost or expense described in the preceding sentence, when set forth in a written notice to the Company containing the Agent’s or any Lender’s calculations thereof in reasonable detail, shall be conclusive and binding upon the Company, in the absence of manifest error. In no case shall the Agent or any Lender be entitled to any compensation from the Company pursuant to this Section 7.10 unless demand therefor is made within 180 days following the incidence of the loss, cost or expense giving rise to an obligation by the Company under this Section 7.10.

Section 7.11 Early Termination Fee. [Intentionally deleted]

Section 7.12 Capital Adequacy. In the event that any Lender, subsequent to the Closing Date, determines in the exercise of its reasonable business judgment that (a) any change in applicable law, rule, regulation or guideline regarding capital adequacy, or (b) any change in the interpretation or administration thereof, or (c) compliance by such Lender with any new request or directive regarding capital adequacy (whether or not having the force of law) of any central bank or other governmental or regulatory authority, has or would have the effect of reducing the rate of return on such Lender’s capital as a consequence of its obligations hereunder to a level below that which such Lender could have achieved but for such change or compliance (taking into consideration such Lender’s policies with respect to capital adequacy) by an amount deemed material by such Lender in the exercise of its reasonable business judgment, the Company agrees to pay to such Lender, no later than five (5) days following demand by such Lender, such additional amount or amounts as will compensate such Lender for such reduction in rate of return. In determining such amount or amounts, such Lender may use any reasonable averaging or attribution methods. The protection of this Section 7.12 shall be available to any Lender regardless of any possible contention of invalidity or inapplicability with respect to the applicable law, regulation or condition. A certificate of a Lender setting forth such amount or amounts as shall be necessary to compensate such Lender with respect to this Section 7.12 and the calculation thereof, when delivered to the Company, shall be conclusive and binding on the Company absent manifest error. In the event a Lender exercises its rights pursuant to this Section 7.12, and subsequent thereto determines that the amounts paid by the Company exceeded the amount actually required to compensate such Lender for any reduction in rate of return on its capital, such excess shall be returned to the Company by such Lender. In no case shall the Agent

or any Lender be entitled to any compensation from the Company pursuant to this Section 7.12 unless demand therefore is made within 180 days following the incidence of the reduction in return giving rise to an obligation by the Company under this Section 7.12.

Section 7.13 Taxes, Reserves and Other Conditions. In the event that any applicable law, treaty or governmental regulation, or any change therein or in the interpretation or application thereof, or compliance by any Lender with any new request or directive (whether or not having the force of law) of any central bank or other governmental or regulatory authority, shall:

(a) subject such Lender to any tax of any kind whatsoever with respect to this Financing Agreement or change the basis of taxation of payments to such Lender of principal, fees, interest or any other amount payable hereunder or under any other DIP Financing Document (except for federal income taxes or state income or franchise taxes or changes in the rate of tax on the overall net income of such Lender by the federal government or other jurisdiction in which it maintains its principal office);

(b) impose or require any reserve, special deposit, assessment or similar requirement against assets held by, or deposits in or for the account of, advances or loans by, or other credit extended by such Lender by reason of or in respect to this Financing Agreement and the DIP Financing Documents, including (without limitation) pursuant to Regulation D of the Board of Governors of the Federal Reserve System; or

(c) impose on such Lender any other condition with respect to this Financing Agreement or any other document;

and the result of any of the foregoing is to (i) increase the cost to such Lender of making, renewing or maintaining such Lender's loans hereunder by an amount deemed material by such Lender in the exercise of its reasonable business judgment, or (ii) reduce the amount of any payment (whether of principal, interest or otherwise) in respect of any of the loans made hereunder by an amount that such Lender deems to be material in the exercise of its reasonable business judgment, the Company agrees to pay to such Lender, no later than five (5) days following demand by such Lender, such additional amount or amounts as will compensate such Lender for such increase in cost or reduction in payment, as the case may be. A certificate of any Lender setting forth such amount or amounts as shall be necessary to compensate such Lender with respect to this Section 7.13 and the calculation thereof, when delivered to the Company, shall be conclusive and binding on the Company absent manifest error. In the event any Lender exercises its rights pursuant to this Section 7.13, and subsequent thereto determines that the amounts paid by the Company in whole or in part exceeded the amount actually required to compensate such Lender for any increase in cost or reduction in payment, such excess shall be returned to the Company by such Lender. In no case shall the Agent or any Lender be entitled to any compensation from the Company pursuant to this Section 7.13 unless demand therefore is made within 180 days following the incidence of the reduction in return giving rise to an obligation by the Company under this Section 7.13.

Section 7.14 Authority to Charge Revolving Loan Account. The Company hereby authorizes the Agent to charge the Revolving Loan Account with the amount of all payments due

under this Article 7 as such payments become due. Any amount charged to the Revolving Loan Account shall be deemed a Chase Bank Rate Loan hereunder and shall bear interest at the rate provided in Section 7.1 (or Section 7.2, if applicable) of this Financing Agreement. The Company confirms that any charges which the Agent may make to the Revolving Loan Account as provided herein will be made as an accommodation to the Company and solely at the Agent's discretion.

ARTICLE 8 **POWERS**

Section 8.1 Authority. The Company hereby authorizes the Agent, or any person or agent which the Agent may designate, at the Company's cost and expense, to exercise all of the following powers, which authority shall be irrevocable until the termination of this Financing Agreement and the full and final payment and satisfaction of the Obligations:

(a) To receive, take, endorse, sign, assign and deliver, all in the name of the Agent or the Company, any and all checks, notes, drafts, and other documents or instruments relating to the Collateral;

(b) To receive, open and dispose of all mail addressed to the Company;

(c) To request from customers indebted on Accounts at any time, in the name of the Agent, information concerning the amounts owing on the Accounts;

(d) To request from customers indebted on Accounts at any time, in the name of the Company, any certified public accountant designated by the Agent or any other designee of the Agent, information concerning the amounts owing on the Accounts;

(e) To transmit to customers indebted on Accounts notice of the Agent's interest therein and to notify customers indebted on Accounts to make payment directly to the Agent for the Company's account; and

(f) To take or bring, in the name of the Agent, the Lenders or the Company, all steps, actions, suits or proceedings deemed by the Agent necessary or desirable to enforce or effect collection of the Accounts.

Section 8.2 Limitations on Exercise. Notwithstanding any other provision of this Financing Agreement to the contrary, the powers set forth in Section 8.1(b), Section 8.1(c), Section 8.1(e) and Section 8.1(f) may only be exercised if an Event of Default shall have occurred and remain outstanding.

ARTICLE 9 **EVENTS OF DEFAULT AND REMEDIES**

Section 9.1 Events of Default. Each of the following events shall constitute an "Event of Default" under this Agreement:

(a) the cessation of the business of the Company;

(b) the failure of the Company to pay any of the Obligations within five (5) Business Days of the due date thereof, provided that nothing contained herein shall prohibit the Agent from charging such amounts to the Revolving Loan Account on the due date thereof;

(c) any representation or warranty made by the Company in this Financing Agreement shall be false or misleading in any material respect;

(d) the Company shall fail to comply with any of the provisions of the Financing Order in any material respect; a trustee shall be appointed in the Chapter 11 Case; an examiner shall be appointed in the Chapter 11 Case with enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; the Chapter 11 Case shall be dismissed or converted to a case under chapter 7; the Company or any Affiliate shall obtain Court approval of a disclosure statement for a Reorganization Plan other than an Acceptable Plan or a Confirmation Order shall be entered with respect to a Reorganization Plan proposed by a Person other than the Company if such Reorganization Plan is not an Acceptable Plan; there shall be filed by the Company any motion to sell all or a substantial part of the Collateral on terms that are not acceptable to the Required Lenders in their sole discretion; the Company shall file any motion to alter, amend, vacate, supplement, modify or reconsider, in any respect, the Financing Order, or, without the Agent's prior written consent, the Financing Order is amended, vacated, stayed, reversed or otherwise modified; the Court shall enter an order granting to any Person (other than the Agent, any Lender or any lessor under an equipment lease) relief from the automatic stay to foreclose upon a lien with respect to any property of the Company that has an aggregate book value in excess of \$250,000; an order shall be entered for the substantive consolidation of the estate of the Company with any other Person; the Company shall not have sufficient Net Availability to pay on any date or within two Business Days of such date, or shall otherwise fail to pay as and when due and payable, all administrative costs or expenses incurred by it in the Chapter 11 Case that are due and payable on such date; the Company shall file a motion or other request with the Court seeking authority to use any cash Proceeds of the Collateral or obtain any financing under Section 364(c) or (d) of the Bankruptcy Code or otherwise secured by a lien upon any Collateral (in each case (i) without the Agent's prior written consent or (ii) if such motion fails to contemplate payment in full of the Obligations); or an application shall be filed by the Company for the approval of any super-priority claim in the Chapter 11 Case that is *pari passu* with or senior to the Obligations or there shall arise or be granted any such *pari passu* or senior super-priority claim;

(e) the breach or violation by the Company of any covenant or agreement contained in this Financing Agreement (other than those referred to in Section 9.1(f) below), provided that such breach or violation shall not be deemed to be an Event of Default unless the Company fails to cure such breach or violation to the Agent's reasonable satisfaction within fifteen (15) days from the earlier of (i) the date upon which any Responsible Officer of the Company obtains actual knowledge of such breach or violation, or (ii) the Agent notifies the Company of such breach or violation;

(f) the breach or violation by the Company of any covenant or agreement contained in Section 3.2, Section 5.5, Section 5.6(b), Section 6.2(c), Section 6.2(d), Section 6.2(g), Section 6.3 and Section 6.4;

(g) the Company shall (i) engage in any “prohibited transaction” (as defined in Section 406 of ERISA and Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**")) not subject to an applicable exemption, (ii) incur, as of the end of any plan year, an "accumulated funding deficiency" as defined in Section 412(a) of the Code, (iii) other than "reportable events" arising from the filing of the Chapter 11 Case or the failure by the Company to make any payment which it is precluded from paying as a result of the Chapter 11 Case, incur any “reportable event” as defined in ERISA with respect to which the Pension Benefit Guaranty Corporation has not waived the applicable reporting requirement, (iv) terminate any “plan”, as defined in ERISA or (v) become involved in any proceeding in which the Pension Benefit Guaranty Corporation shall seek appointment, or is appointed, as trustee or administrator of any “plan”, as defined in ERISA, and with respect each of the foregoing clauses (i) _ (v) of this Section 9.1(g), such event or condition (A) remains uncured for a period of thirty (30) days from date any Responsible Officer of the Company obtains actual knowledge of such event or condition and (B) could reasonably be expected to, subject the Company to any tax, penalty or other liability having a Material Adverse Effect;

(h) the occurrence of any default or event of default (after giving effect to any applicable grace or cure period) under any of the other DIP Financing Documents, or any of the other DIP Financing Documents ceases to be valid, binding and enforceable in accordance with its terms;

(i) the occurrence of any default or event of default (after giving effect to any applicable grace or cure period) under any instrument or agreement evidencing or governing any Indebtedness of the Company which was entered into after the Petition Date and having a principal amount in excess of \$100,000, the effect of which default or event of default is to allow the holders of such Indebtedness to cause such Indebtedness to become due prior to its stated maturity;

(j) the Company shall modify the terms or provisions of any agreement, instrument or other document relating to any Subordinated Debt without the Agent’s prior written consent, unless such modification is permitted by the applicable Subordination Agreement; or

(k) Any material covenant, agreement or obligation of the Company contained in or evidenced by any of the DIP Financing Documents shall cease to be enforceable or shall be determined to be unenforceable in accordance with its terms; the Company shall deny or disaffirm its obligations under any of the DIP Financing Documents or any security interests granted to the Agent in connection therewith; or the security interests granted in any of the Collateral owned by the Company shall be determined to be voidable, invalid or subordinated or shall be determined, with respect to any material part of the Collateral owned by the Company, to be unperfected or to not have the priority contemplated by this Financing Agreement.

Section 9.2 Remedies With Respect to Outstanding Loans. Upon the occurrence of a Default or an Event of Default, at the option of the Agent or the Required Lenders and subject to any notice required by the Financing Order, all loans, advances and extensions of credit provided for in Article 3 and Article 4 of this Financing Agreement thereafter shall be made in the Agent’s and the Lenders’ discretion, and the obligation of the Agent and the Lenders to make

Revolving Loans, and to assist the Company in opening Letters of Credit, shall cease unless such Default is cured to the satisfaction of the Required Lenders or such Event of Default is waived in accordance herewith. In addition, upon the occurrence and during the continuance of an Event of Default, the Agent may, at its option, and the Agent shall, upon the request of the Required Lenders and subject to any notice required by the Financing Order, (a) declare all Obligations immediately due and payable, (b) charge the Company the Default Rate of Interest on all then outstanding or thereafter incurred Obligations in lieu of the interest provided for in Section 7.1 of this Financing Agreement, provided that the Agent has given the Company written notice of such Event of Default if required by Section 7.2, and (c) immediately terminate this Financing Agreement upon notice to the Company. The exercise of any option is not exclusive of any other option that may be exercised at any time by the Agent or the Lenders.

Section 9.3 Remedies With Respect to Collateral. After the occurrence and during the continuance of an Event of Default, but subject at all times to any limitations in the Financing Order, including any notice required by the Financing Order, the Agent may, at its option, and the Agent shall, upon the request of the Required Lenders, to the extent permitted by applicable law: (a) remove from any premises where same may be located any and all books and records, computers, electronic media and software programs associated with any Collateral (including electronic records, contracts and signatures pertaining thereto), documents, instruments and files, and any receptacles or cabinets containing same, relating to the Accounts, and the Agent may use, at the Company's expense, such of the Company's personnel, supplies or space at the Company's places of business or otherwise, as may be necessary to properly administer and control the Accounts or the handling of collections and realizations thereon; (b) bring suit, in the name of the Company, the Lenders or the Agent on behalf of the Lenders, and generally shall have all other rights respecting the Accounts, including, without limitation, the right to (i) accelerate or extend the time of payment, (ii) settle, compromise, release in whole or in part any amounts owing on any Accounts and (iii) issue credits in the name of the Company or the Agent; (c) sell, assign and deliver the Collateral and any returned, reclaimed or repossessed merchandise, with or without advertisement, at public or private sale, for cash, on credit or otherwise, in any commercially reasonable manner, at the Agent's sole option and discretion, and the Agent, on behalf of the Lenders, may bid or become a purchaser at any such sale (unless prohibited by the Uniform Commercial Code, as adopted in the applicable jurisdiction), free from any right of redemption, to the extent permitted by applicable law, which right is hereby expressly waived by the Company; (d) foreclose the Agent's security interests in the Collateral by any available judicial procedure, or take possession of any or all of the Collateral without judicial process, and to enter any premises where any Collateral may be located for the purpose of taking possession of or removing the same; and (e) exercise any other rights and remedies provided in law, in equity, by contract or otherwise. The Agent shall have the right, without notice or advertisement, to sell, lease, or otherwise dispose of all or any part of the Collateral whether in its then condition or after further preparation or processing, in the name of the Company or the Agent, on behalf of the Lenders, or in the name of such other party as the Agent may designate, either at public or private sale or at any broker's board, in lots or in bulk, for cash or for credit, with or without warranties or representations (including, without limitation, warranties of title, possession, quiet enjoyment and the like), and upon such other terms and conditions as the Agent in its sole discretion may deem advisable, and the Agent shall have the right to purchase at any such sale on behalf of the Lenders (unless prohibited by the Uniform Commercial Code, as adopted in the applicable jurisdiction). If any Inventory and Equipment

shall require rebuilding, repairing, maintenance or preparation, the Agent shall have the right, at its option, to do such of the aforesaid as is necessary, for the purpose of putting the Inventory and Equipment in such saleable form as the Agent shall deem appropriate. The Company agrees, at the request of the Agent, to assemble the Inventory and Equipment, and to make it available to the Agent at premises of the Company or elsewhere and to make available to the Agent the premises and facilities of the Company for the purpose of the Agent's taking possession of, removing or putting the Inventory and Equipment in saleable form. If notice of intended disposition of any Collateral is required by law, it is agreed that ten (10) days notice shall constitute reasonable notification and full compliance with the law. The net cash proceeds resulting from the Agent's exercise of any of the foregoing rights (after deducting all Out-of-Pocket Expenses relating thereto) shall be applied by the Agent to the payment of the Obligations in the order set forth in Section 9.4 hereof, and the Company shall remain liable to the Agent and the Lenders for any deficiencies, and the Agent in turn agrees to remit to the Company or its successors or assigns, any surplus resulting therefrom. The enumeration of the foregoing rights is not intended to be exhaustive and the exercise of any right shall not preclude the exercise of any other right of the Agent or the Lenders under applicable law, the Financing Order or the DIP Financing Documents, all of which shall be cumulative.

Section 9.4 Application of Proceeds. The Agent agrees to apply the net cash proceeds resulting from the Agent's exercise of any of the foregoing rights (after deducting all Out-of-Pocket Expenses relating thereto) to the payment of the Obligations in the following order:

- (a) first, to all unpaid Out of Pocket Expenses;
- (b) second, to all accrued and unpaid fees owed to the Agent and the Lenders;
- (c) third, to accrued and unpaid interest on the Obligations; and
- (d) fourth, to the unpaid principal amount of the Obligations.

Section 9.5 General Indemnity. In addition to the Company's agreement to reimburse the Agent and the Lenders for Out-of-Pocket Expenses, but without duplication, the Company hereby agrees to indemnify the Agent and the Lenders, and each of their respective officers, directors, employees, attorneys and agents (each, an "**Indemnified Party**") from, and to defend and hold each Indemnified Party harmless against, any and all losses, liabilities, obligations, claims, actions, judgments, suits, damages, penalties, costs, fees, expenses (including reasonable attorney's fees) of any kind or nature which at any time may be imposed on, incurred by, or asserted against, any Indemnified Party:

(a) as a result of the Agent's or the Lenders, exercise of (or failure to exercise) any of their respective rights and remedies hereunder, including, without limitation, (i) any sale or transfer of the Collateral, (ii) the preservation, repair, maintenance, preparation for sale or securing of any Collateral, and (iii) the defense of the Agent's interests in the Collateral (including the defense of claims brought by the Company, as a debtor-in-possession or otherwise, any secured or unsecured creditors of the Company, or any trustee or receiver in bankruptcy);

(b) as a result of any environmental pollution, hazardous material or environmental clean up relating to the Real Estate, the Company's operation and use of the Real Estate, and the Company's off site disposal practices;

(c) arising from or relating to (i) the maintenance and operation of any Depository Account, (ii) any Depository Account Control Agreements and (iii) any action taken (or failure to act) by any Indemnified Party with respect thereto;

(d) in connection with any regulatory investigation or proceeding by any regulatory authority or agency having jurisdiction over the Company and relating to or connected with this Financing Agreement or any of the other DIP Financing Documents; or

(e) otherwise relating to or arising out of the transactions contemplated by this Financing Agreement and the other DIP Financing Documents and the Financing Order, or any action taken (or failure to act) by any Indemnified Party with respect thereto;

provided that an Indemnified Party's conduct in connection with the any of the foregoing matters does not constitute gross negligence or willful misconduct (**IT BEING INTENDED THAT AN INDEMNIFIED PARTY'S ORDINARY NEGLIGENCE SHALL BE SUBJECT TO INDEMNIFICATION HEREUNDER**), as finally determined by a court of competent jurisdiction. This indemnification shall survive the termination of this Financing Agreement and the payment and satisfaction of the Obligations. The Agent may from time to time establish Availability Reserves with respect to this indemnity as the Agent may deem advisable in the exercise of its reasonable business judgment, and upon termination of this Financing Agreement, the Agent may hold cash reserves as security for this indemnity.

ARTICLE 10 **TERMINATION**

The Company may terminate this Financing Agreement at any time prior to the Termination Date upon thirty (30) days prior written notice to the Agent. All Obligations shall become due and payable in full on the date of any termination hereunder and, pending a final accounting of the Obligations, which shall be provided to the Company by the Agent within 60 days of such termination, the Agent may withhold any credit balances in the Revolving Loan Account (unless supplied with an indemnity satisfactory to the Agent) as a cash reserve during such 60 day period to cover any contingent Obligation then outstanding; provided that the Agent may withhold credit balances in the Revolving Loan Account in an amount equal to 110% of each outstanding Letter of Credit (unless supplied with an indemnity reasonably satisfactory to the Agent) as cash collateral for such outstanding Letter of Credit for so long as such Letter of Credit remains outstanding. All of the Agent's and the Lenders' rights, liens and security interests granted pursuant to the DIP Financing Documents shall continue after any termination of this Financing Agreement until all Obligations have been fully and finally paid and satisfied.

ARTICLE 11 **MISCELLANEOUS**

Section 11.1 Waivers. The Company hereby waives diligence, demand, presentment, protest and any notices thereof as well as notices of nonpayment, intent to accelerate and

acceleration. No waiver of an Event of Default shall be effective unless such waiver is in writing and signed by the Required Lenders. No delay or failure of the Agent or the Lenders to exercise any right or remedy hereunder, whether before or after the happening of any Event of Default, shall impair any such right or remedy, or shall operate as a waiver of such right or remedy, or as a waiver of such Event of Default. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. No single or partial exercise by the Agent or the Lenders of any right or remedy precludes any other or further exercise thereof, or precludes any other right or remedy.

Section 11.2 Integration; Amendments. This Financing Agreement and the other DIP Financing Documents: (a) constitute the entire agreement among the Company, the Agent and/or the Lenders; (b) supersede any prior agreements (including the agreements set forth in the Commitment Letter); (c) subject to the provisions of Section 13.10 hereof that relate to matters subject to the approval of all Lenders, may be amended only by a writing signed by the Company and the Required Lenders; and (d) shall bind and benefit the Company, the Agent, the Lenders and their respective successors and assigns. Should the provisions of any other DIP Financing Document conflict with the provisions of this Financing Agreement, the provisions of this Financing Agreement shall apply and govern.

Section 11.3 Usury Limit. In no event shall the Company, upon demand by the Agent for payment of any indebtedness relating hereto, by acceleration of the maturity thereof, or otherwise, be obligated to pay interest and fees in excess of the amount permitted by applicable law. Regardless of any provision herein or in any agreement made in connection herewith, the Agent and the Lenders shall never be entitled to receive, charge or apply, as interest on any indebtedness relating hereto, any amount in excess of the maximum amount of interest permissible under applicable law. If the Agent or the Lenders ever receive, collect or apply any such excess, it shall be deemed a partial repayment of principal and treated as such. If as a result, the entire principal amount of the Obligations is paid in full, any remaining excess shall be refunded to the Company. This Section 11.3 shall control over every other provision of the Financing Agreement, the other DIP Financing Documents and any other agreements made in connection herewith or therewith.

Section 11.4 Severability. If any provision hereof or of any other DIP Financing Document is held to be illegal or unenforceable, such provision shall be fully severable, and the remaining provisions of the applicable agreement shall remain in full force and effect and shall not be affected by such provision's severance. Furthermore, in lieu of any such provision, there shall be added automatically as a part of the applicable agreement a legal and enforceable provision as similar in terms to the severed provision as may be possible.

Section 11.5 WAIVER OF JURY TRIAL; SERVICE OF PROCESS. THE COMPANY, THE AGENT AND THE LENDERS EACH HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE DIP FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREUNDER. THE COMPANY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO SERVICE OF PROCESS BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED. IN NO EVENT

WILL THE AGENT OR THE LENDERS BE LIABLE FOR LOST PROFITS OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES.

Section 11.6 Notices. Except as otherwise herein provided, any notice or other communication required hereunder shall be in writing (messages sent by e-mail or other electronic transmission (other than by telecopier) shall not constitute a writing, however any signature on a document or other writing that is transmitted by e-mail or telecopier shall constitute a valid signature for purposes hereof), and shall be deemed to have been validly served, given or delivered when received by the recipient if hand delivered, sent by commercial overnight courier or sent by facsimile, or three (3) Business Days after deposit in the United States mail, with proper first class postage prepaid and addressed to the party to be notified as follows:

(a) if to the Agent, at:

The CIT Group/Business Credit, Inc.
5420 LBJ Freeway, Suite 200
Dallas, Texas 75240
Attn: Regional Credit Manager
Telecopier No.: (972) 455-1690;

(b) if to the Company at:

ASARCO LLC
1150 N. 7th Avenue
Tucson, Arizona 85705
Attn: Genaro Guerrero
Telecopier No.: (520) 879-7337;

(c) if to any Lender, at its address set forth below its signature to this Financing Agreement or its address specified in the Assignment and Transfer Agreement executed by such Lender; or

(d) to such other address as any party may designate for itself by like notice to each other party hereto (or, in the case of the Company, to the Agent).

Section 11.7 CHOICE OF LAW. THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS FINANCING AGREEMENT AND THE OTHER DIP FINANCING DOCUMENTS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, EXCEPT TO THE EXTENT THAT ANY OTHER DIP FINANCING DOCUMENT INCLUDES AN EXPRESS ELECTION TO BE GOVERNED BY THE LAWS OF ANOTHER JURISDICTION.

ARTICLE 12 **AGREEMENTS REGARDING THE LENDERS**

Section 12.1 Copies of Statements and Financial Information. The Agent shall forward to each Lender a copy of the monthly loan account statement delivered by the Agent to

the Company. In addition, the Agent agrees to provide the Lenders with copies of all financial statements, projections and business plans of the Company that the Agent receives from the Company or its advisors from time to time, without any duty to confirm or verify that such information is true, correct or complete.

Section 12.2 Interest and Fees. After the Agent's receipt of, or charging of, any interest and fees earned under this Financing Agreement, the Agent agrees to remit promptly to the Lenders their respective Pro Rata Percentages of:

(a) fees payable by the Company hereunder, provided that (i) the Lenders shall not share the Underwriting Fee or the other fees set forth in Section 7.8 of this Financing Agreement, and (ii) the Lenders shall share in the Loan Facility Fee in accordance with their respective agreements with the Agent; and

(b) interest paid on the outstanding principal amount of Revolving Loans, calculated based on the outstanding amount of Revolving Loans advanced by each of the Lenders as of each Settlement Date during the period for which interest is paid.

Section 12.3 Defaulting Lender. In the event that any Lender fails to make available to the Agent such Lender's Pro Rata Percentage of any borrowing by the Company on the Settlement Date in accordance with the provisions of Section 3.1(d) hereof, and the Company does not repay to the Agent such Lender's Pro Rata Percentage of the borrowing within three (3) Business Days of such borrowing, the Agent shall have the right to recover such Lender's Pro Rata Percentage of the borrowing directly from such Lender, together with interest thereon from the date of the borrowing at the rate per annum applicable to such borrowing. In addition, until the Agent recovers such amount, (a) such Lender shall not be entitled to receive any payments under Section 12.2 hereof, and (b) for purposes of voting on or consenting to other matters with respect to this Agreement or the other DIP Financing Documents, such Lender's Commitment shall be deemed to be zero and such Lender shall not be considered to be a Lender.

Section 12.4 Participations and Assignments.

(a) **Participations.** With the prior written consent of the Agent (which consent will not unreasonably be withheld), the Lenders may sell to one or more commercial banks, commercial finance lenders or other financial institutions, participations in the loans and other extensions of credit made and to be made to the Company hereunder. The Company acknowledges that in selling such participations, the Lenders may grant to participants certain rights to consent to waivers, amendments and other actions with respect to this Financing Agreement, provided that the consent of any participant shall be limited solely to matters as to which all Lenders must consent under Section 13.10 hereof. Except for the consent rights set forth above, no participant shall have any rights as a Lender hereunder. Notwithstanding the sale of any participation by a Lender, such Lender shall remain solely responsible to the other parties hereto for the performance of such Lender's obligations hereunder, and the Company, the Agent and the other Lenders may continue to deal solely with such Lender with respect to all matters relating to this Financing Agreement and the transactions contemplated hereby. In addition, all amounts payable under this Financing Agreement to a Lender which sells a participation in accordance with this paragraph shall continue to be paid directly to such Lender.

(b) Assignments. Any Lender that is a party hereto as of the Closing Date shall have the right to assign a portion of such Lender's rights and obligations under this Financing Agreement to a commercial bank, commercial finance lender or other financial institution in order to effectuate the contemplated syndication of the Commitments, provided that the principal amount of loans assigned to any one institution shall not be less than \$5,000,000. Under any other circumstances, with the prior written consent of the Agent, the Lenders may assign all or any portion of their respective rights and obligations under this Financing Agreement to commercial banks, commercial finance lenders or other financial institutions, provided that (i) the principal amount of loans assigned to any one institution shall not be less than \$5,000,000, (ii) such assignment shall be allocated ratably between such Lender's Revolving Loan Commitments hereunder, and (iii) the assignee shall pay to the Agent an assignment processing and recording fee of One Thousand Dollars (\$1,000.00) for the Agent's own account. Each assignment of a Commitment hereunder must be made pursuant to an Assignment and Transfer Agreement. From and after the effective date of an Assignment and Transfer Agreement, (A) the assignee thereunder shall become a party to this Financing Agreement and, to the extent that rights and obligations hereunder have been assigned to such assignee pursuant to such assignment, shall have all rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by such Lender pursuant to such assignment, shall relinquish its rights and be released from its obligations under this Financing Agreement.

(c) Cooperation of Company. If necessary, the Company agrees to (i) execute any documents (including new Promissory Notes) reasonably required to effectuate and acknowledge each assignment of a Commitment made pursuant to an Assignment and Transfer Agreement, (ii) make the Company's management available, upon reasonable notice during normal business hours, to meet with the Agent and prospective participants and assignees of Commitments and (iii) assist the Agent or the Lenders in the preparation of information relating to the financial affairs of the Company as any prospective participant or assignee of a Commitment reasonably may request. Subject to the provisions of Section 12.7, the Company authorizes each Lender to disclose to any prospective participant or assignee of a Commitment, any and all information in such Lender's possession concerning the Company and its financial affairs which has been delivered to such Lender by or on behalf of the Company pursuant to this Financing Agreement, or which has been delivered to such Lender by or on behalf of the Company in connection with such Lender's credit evaluation of the Company prior to entering into this Financing Agreement.

Section 12.5 Sharing of Liabilities. In the event that the Agent, the Lenders or any one of them is sued or threatened with a suit, action or claim by the Company or by a creditor, committee of creditors, trustee, receiver, liquidator, custodian, administrator or other similar official acting for or on behalf of the Company on account of (a) any preference, fraudulent conveyance or other voidable transfer alleged to have occurred or been received as a result of the operation of this Financing Agreement or the transactions contemplated hereby, or (b) any lender liability theory based on any action taken or not taken by such person in connection with this Financing Agreement or the transactions contemplated hereby, any money paid in satisfaction or compromise of such suit, action, claim or demand, and any expenses, costs and attorneys' fees paid or incurred in connection therewith (whether by the Agent, the Lenders or any one of them), shall be shared proportionately by the Lenders according to their respective Pro Rata

Percentages, except to the extent that such person's own gross negligence or willful misconduct directly gave rise to such suit, action or claim. In addition, any costs, expenses, fees or disbursements incurred by agents or attorneys retained by the Agent to effect collection of the Obligations or enforcement of any rights in the Collateral, including enforcing, preserving or maintaining rights under this Financing Agreement or the Financing Order, shall be shared among the Lenders according to their respective Pro Rata Percentages to the extent not reimbursed by the Company or from the proceeds of Collateral. The provisions of this Section 12.5 shall not apply to any suits, actions, proceedings or claims that (i) are filed or asserted prior to the Closing Date or (ii) are based on transactions, actions or omissions occurring prior to the date of this Financing Agreement.

Section 12.6 Exercise of Setoff Rights. The Company authorizes each Lender, and each Lender shall have the right, after the occurrence of an Event of Default, without notice, except as required by the Financing Order, to set off and apply against any and all property or assets of the Company held by, or in the possession of such Lender, any of the Obligations owed to such Lender. Promptly after the exercise of any right to set off, the Lender exercising such right irrevocably agrees to purchase for cash (and the other Lenders irrevocably agree to sell) participation interests in each other Lender's outstanding Revolving Loans as would be necessary to cause such Lender to share the amount of the property set off with the other Lenders based on each Lender's Pro Rata Percentage. The Company agrees, to the fullest extent permitted by law, that any Lender also may exercise its right to set off with respect to amounts in excess of such Lender's Pro Rata Percentage of the Obligations then outstanding, and may purchase participation interests in the amounts so set off from the other Lenders, and upon doing so shall deliver such excess to Agent, for distribution to the other Lenders in settlement of the participation purchases described above in this Section 12.6.

Section 12.7 Confidentiality. For the purposes of this Section 12.7, "Confidential Information" means all financial projections and all other information delivered to the Agent or any Lender by or on behalf of the Company in connection with the transactions contemplated by or otherwise pursuant to this Financing Agreement that is proprietary in nature and that is clearly marked or labeled (or otherwise adequately identified) as being confidential information of the Company, provided that such term does not include information that (a) was publicly known or otherwise known to the Agent or any of the Lenders prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by the Agent or the Lenders or any person acting on their behalf, (c) otherwise becomes known to the Agent or the Lenders other than through disclosure by the Company or any other person or entity bound hereby or (d) constitutes financial statements delivered under this Financing Agreement that are otherwise publicly available. The Agent and the Lenders will maintain the confidentiality of such Confidential Information in accordance with commercially reasonable procedures adopted by the Agent and the Lenders in good faith to protect confidential information of third parties delivered to them, provided that the Agent and the Lenders may deliver or disclose Confidential Information to:

- (i) their respective directors, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the Revolving Line of Credit);

(ii) their respective financial advisors and other professional advisors who are advised to hold confidential the Confidential Information substantially in accordance with the terms of this Section 12.7;

(iii) any other Lender;

(iv) a commercial bank, commercial finance lender or other financial institution to which the Agent or a Lender sells or offers to sell a portion of their rights and obligations under this Financing Agreement or any participation therein, provided that so long as no Event of Default shall have occurred and remain outstanding, such entity agrees in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 12.7; or

(v) any other person or entity (including bank auditors and other regulatory officials) to which such delivery or disclosure may be required (A) to comply with any applicable law, rule, regulation or order, (B) in response to any subpoena or other legal process, (C) in connection with any litigation to which the Agent or a Lender is a party or (D) if an Event of Default shall have occurred and remain outstanding, to the extent the Agent may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under this Financing Agreement.

Each Lender becoming a Lender subsequent to the initial execution and delivery of this Financing Agreement, by its execution and delivery of an Assignment and Transfer Agreement, will be deemed to have agreed to be bound by, and to be entitled to the benefits of, this Section 12.7.

ARTICLE 13 **AGENCY**

Section 13.1 Appointment of Agent; Powers. Each Lender hereby irrevocably designates and appoints CIT to act as the Agent for such Lender under this Financing Agreement and the other DIP Financing Documents, and irrevocably authorizes CIT, as Agent for such Lender, to take such action on its behalf under the provisions of this Financing Agreement and the other DIP Financing Documents, and to exercise such powers and perform such duties as are expressly delegated to the Agent by the terms of this Financing Agreement and the other DIP Financing Documents, together with such other powers as are reasonably incidental thereto. In performing its functions under this Financing Agreement, the Agent is acting solely as an agent of the Lenders, and the Agent does not assume, and shall not be deemed to have assumed, an agency or other fiduciary relationship with the Company. The Agent shall not have any (a) duty, responsibility, obligation or liability to any Lender, except for those duties, responsibilities, obligations and liabilities expressly set forth in this Financing Agreement, or (b) fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Financing Agreement or the other DIP Financing Documents, or otherwise exist against the Agent.

Section 13.2 Delegation of Agent's Duties. The Agent may execute any of its duties under this Financing Agreement and all ancillary documents by or through agents or attorneys, and shall be entitled to the advice of counsel concerning all matters pertaining to such duties.

Section 13.3 Disclaimer of Agent's Liabilities. Neither the Agent nor any of its officers, directors, employees, agents, or attorneys shall be liable to any Lender for any action lawfully taken or not taken by the Agent or such person under or in connection with the Financing Agreement and the other DIP Financing Documents (except for the Agent's or such person's gross negligence or willful misconduct). Without limiting the generality of the foregoing, the Agent shall not be liable to the Lenders for (a) any recital, statement, representation or warranty made by the Company or any officer thereof contained in (i) this Financing Agreement, (ii) any other DIP Financing Document or (iii) any certificate, report, audit, statement or other document referred to or provided for in this Financing Agreement or received by the Agent under or in connection with this Financing Agreement, (b) the value, validity, effectiveness, enforceability or sufficiency of this Financing Agreement, the other DIP Financing Documents or the Agent's security interests in the Collateral, (c) any failure of the Company to perform its obligations under this Financing Agreement and the other DIP Financing Documents, (d) any loss or depreciation in the value of, delay in collecting the Proceeds of, or failure to realize on, any Collateral, (e) the Agent's delay in the collection of the Obligations or enforcing the Agent's rights against the Company, or the granting of indulgences or extensions to the Company, or any account debtor of the Company, or (f) for any mistake, omission or error in judgment in passing upon or accepting any Collateral. In addition, the Agent shall have no duty or responsibility to ascertain or to inquire as to the observance or performance of any of the terms, conditions, covenants or other agreements of the Company contained in this Financing Agreement or the other DIP Financing Documents, or to inspect, verify, examine or audit the assets, books or records of the Company at any time.

Section 13.4 Reliance and Action by Agent. The Agent shall be entitled to rely, and shall be fully protected in relying, upon legal counsel, independent public accountants and experts selected by Agent, and shall not be liable to the Lenders for any action taken or not taken in good faith based upon the advise of such counsel, accountants or experts. In addition, the Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document believed by the Agent in good faith to be genuine and correct, and to have been signed, sent or made by the proper person or persons. The Agent shall be fully justified in taking or refusing to take any action under this Financing Agreement and the other DIP Financing Documents unless the Agent (a) receives the advice or consent of the Lenders or the Required Lenders, as the case may be, in a manner that the Agent deems appropriate, or (b) is indemnified by the Lenders to the Agent's satisfaction against any and all liability, cost and expense which may be incurred by the Agent by reason of taking or refusing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Financing Agreement and the other DIP Financing Documents in accordance with a request of all Lenders or the Required Lenders, as the case may be, and such request and any action taken or failure to act pursuant thereto shall be binding upon all Lenders.

Section 13.5 Events 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 the Company or a Lender describing such Default or Event of Default with specificity. In the event that the Agent receives such a notice, the Agent shall promptly give notice thereof to all Lenders. The Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Lenders or Required Lenders, as the case may be, provided that (a) if appropriate, the Agent may require indemnification from the Lenders under Section 13.4 prior to taking such action, (b) under no circumstances shall the Agent have an obligation to take any action that the Agent believes in good faith would violate any law or any provision of the Financing Order, this Financing Agreement or the other DIP Financing Documents, and (c) unless and until the Agent shall have received direction from the Lenders or Required Lenders, as the case may be, the Agent may (but shall not be obligated to) take such action or refrain from taking action with respect to such Default or Event of Default as the Agent shall deem advisable and in the best interests of the Lenders.

Section 13.6 Lenders' Due Diligence. Each Lender expressly acknowledges that neither the Agent, nor any of its officers, directors, employees or agents, has made any representation or warranty to such Lender regarding the transactions contemplated by this Financing Agreement or the financial condition of the Company, and such Lender agrees that no action taken by the Agent hereafter, including any review of the business or financial affairs of the Company, shall be deemed to constitute a representation or warranty by the Agent to any Lender. Each Lender also acknowledges that such Lender has, independently and without reliance upon the Agent or any other Lender and based on such documents and information as such Lender has deemed appropriate, made its own credit analysis, appraisal of and investigation into the business, operations, property, financial condition and creditworthiness of the Company, and made its own decision to enter into this Financing Agreement. Each Lender agrees, independently and without reliance upon the Agent or any other Lender and based on such documents and information as such Lender shall deem appropriate at the time, (a) to continue to make its own credit analyses and appraisals in deciding whether to take or not take action under this Financing Agreement and (b) to make such investigations as such Lender deems necessary to inform itself as to the business, operations, property, financial condition and creditworthiness of the Company.

Section 13.7 Right to Indemnification. The Lenders agree to indemnify the Agent (to the extent not reimbursed by the Company and without limiting the obligation of the Company to do so), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of (a) this Financing Agreement or any other DIP Financing Document, (b) the transactions contemplated hereby or (c) any action taken or not taken by the Agent under or in connection with any of the foregoing, provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from the Agent's gross negligence or willful misconduct (**IT BEING INTENDED THAT LENDERS SHALL BE RESPONSIBLE FOR THE PAYMENT OF SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES OR DISBURSEMENTS RESULTING FROM THE AGENT'S ORDINARY NEGLIGENCE**).

Section 13.8 Other Transactions. The Agent and any Lender may make loans to and generally engage in any kind of business with the Company, as though the Agent or such Lender were not the Agent or a Lender hereunder. With respect to loans made by the Agent under this Financing Agreement as a Lender, the Agent shall have the same rights and powers, duties and liabilities under this Financing Agreement and the other DIP Financing Documents as any other Lender, and may exercise the same as though it was not the Agent, and the term “Lender” and “Lenders” shall include the Agent in its individual capacity as such.

Section 13.9 Resignation of Agent. The Agent may resign as the Agent upon 30 days notice to the Lenders and the Company, and such resignation shall be effective on the earlier of (a) the appointment of a successor Agent by the Lenders or (b) the date on which such 30-day period expires. If the Agent provides the Lenders with notice of its intention to resign as Agent, the Lenders agree to appoint a successor to the Agent (and notify the Company of such appointment) as promptly as possible thereafter, whereupon such successor shall succeed to the rights, powers and duties of the Agent, and the term “Agent” shall mean such successor effective upon its appointment. Upon the effective date of an Agent’s resignation, such Agent’s rights, powers and duties as Agent hereunder immediately shall terminate, without any other or further act or deed on the part of such former Agent or any of the parties to this Financing Agreement. After an Agent’s resignation hereunder, the provisions of this Article 13 shall continue to inure to such Agent’s benefit as to any actions taken or not taken by such Agent while acting as the Agent.

Section 13.10 Voting Rights; Agent’s Discretionary Rights. Notwithstanding anything contained in this Financing Agreement to the contrary, without the prior written consent of all Lenders, the Agent will not agree to:

(a) amend or waive the Company’s compliance with any term or provision of this Financing Agreement, if the effect of such amendment or waiver would be to (i) increase the Revolving Line of Credit (other than as provided in Section 3.8), (ii) reduce the principal of, or rate of interest on the Revolving Loans, (iii) reduce or waive the payment of any fee in which all Lenders share hereunder or (iv) extend the maturity date of any of the Obligations or the date fixed for payment of any installment thereof;

(b) alter or amend (i) this Section 13.10 or (ii) the definitions of “Net Availability”, “Availability Reserve”, “Eligible Accounts Receivable”, “Eligible Inventory” “Collateral” or “Required Lenders”;

(c) except as otherwise expressly permitted or required hereunder, release any Collateral having an aggregate value (as determined by the Agent in its reasonable business judgment) of more than \$1,000,000 in any fiscal year of the Company; or

(d) knowingly make any Revolving Loan to the Company if after giving effect thereto the principal amount of all outstanding Revolving Loans plus the undrawn amount of all outstanding Letters of Credit would exceed the lesser of (i) the Revolving Line of Credit or (ii) one hundred ten percent (110%) of the Borrowing Base of the Company; provided that in no event shall the Agent continue to knowingly make Overadvances under this Section 13.10(d) for a period in excess of ninety (90) consecutive days without the consent of all Lenders, and

provided further that after the occurrence and during the continuance of an Event of Default, the Agent in its sole discretion shall have the right to make Overadvances in excess of the limitation set forth in clause (ii) above in order to preserve, protect and realize upon the Collateral.

In all other respects the Agent is authorized to take or to refrain from taking, for itself or on behalf of the Lenders, any action which the Agent, in the exercise of its reasonable business judgment, deems to be advisable and in the best interest of the Lenders, unless this Financing Agreement specifically requires the Company or the Agent to obtain the consent of, or act at the direction of, the Required Lenders. Without limiting the generality of the foregoing sentence, and notwithstanding any other provision of this Financing Agreement to the contrary, the Agent shall have the right in its sole discretion to (A) determine whether the requirements for eligibility set forth in the definitions of “Eligible Accounts Receivable” and “Eligible Inventory” are satisfied, (B) establish, adjust and release the amount of reserves provided for in the definitions of “Availability Reserve”, “Eligible Accounts Receivable” and “Eligible Inventory”, (C) make Overadvances in accordance with clause (d) of this Section 13.10, (D) release any Collateral which the Company is not otherwise entitled to a release of hereunder having an aggregate value (as determined by the Agent in its reasonable business judgment) of up to \$1,000,000 in each fiscal year of the Company, and (E) amend any provision of this Financing Agreement or the other DIP Financing Documents in order to cure any error, ambiguity, defect or inconsistency set forth therein. In the event the Agent terminates this Financing Agreement pursuant to the terms hereof, the Agent agrees to cease making additional loans or advances upon the effective date of termination, except for loans or advances which the Agent in its sole discretion determines are reasonably required to preserve, protect or realize upon the Collateral.

Section 13.11 Deemed Consent. If a Lender’s consent to a waiver amendment or other course of action is required under the terms of this Financing Agreement and such Lender does not respond to any request by the Agent for such consent within ten (10) Business Days after the date of such request, such failure to respond shall be deemed a consent to the requested course of action.

Section 13.12 Survival of Agreements of the Lenders. The obligations of the Agent and the Lenders set forth in Section 12.3, Section 12.5, Section 12.6, Section 12.7, Section 13.4 and Section 13.7 hereof shall survive the termination of this Financing Agreement.

Section 13.13 Entire Agreement. THIS FINANCING AGREEMENT AND EACH OF THE OTHER DIP FINANCING DOCUMENTS CONSTITUTE THE FINAL AGREEMENT AMONG THE PARTIES WITH RESPECT TO ANY EXTENSION OF CREDIT BY THE AGENT OR ANY OF THE LENDERS SUBJECT HERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO OTHER WRITTEN OR ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the parties hereto have caused this Financing Agreement to be executed, accepted and delivered by their proper and duly authorized officers as of the date set forth above.

THE COMPANY:

ASARCO LLC

By: _____
Title: _____

CIT:

**THE CIT GROUP/BUSINESS CREDIT,
INC., as Agent and a Lender**

By: _____
Name: Richard D. Hatley, Jr.
Title: Vice President

EXHIBIT A

FORM OF ASSIGNMENT AND TRANSFER AGREEMENT ASSIGNMENT AND TRANSFER AGREEMENT

Reference is made to the Financing Agreement dated as of October __, 2005 (as amended, restated supplemented or otherwise modified and in effect from time to time, the "**Financing Agreement**") among ASARCO LLC, a Delaware limited liability company (the "**Company**"), the financial institutions from time to time party thereto, as lenders (collectively, the "**Lenders**", and individually, each a "**Lender**"), and The CIT Group/Business Credit, Inc, a New York corporation, as agent for the Lenders (in such capacity, the "**Agent**"). Capitalized terms used in this Assignment and Transfer Agreement (this "**Agreement**") and not otherwise defined shall have the meanings given to such terms in the Financing Agreement. This Agreement, between the Assignor (as defined and set forth on Schedule 1, which is made a part of this Agreement) and the Assignee (as defined and set forth on Schedule 1) is effective as of Effective Date (as set forth on Schedule 1).

1. The Assignor hereby irrevocably sells and assigns to the Assignee, without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor, without recourse to the Assignor, as of the Effective Date, an undivided interest (the "**Assigned Interest**") in and to all of the Assignor's rights and obligations under the Financing Agreement respecting that, and only that, percentage of the Revolving Line of Credit set forth on Schedule 1 (collectively, the "**Assigned Facility**"), in a dollar amount for the Assigned Facility as set forth on Schedule 1.

2. The Assignor: (i) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Financing Agreement or any other instrument, document or agreement executed or delivered in connection therewith (collectively the "**DIP Financing Documents**"), or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Financing Agreement, any Collateral thereunder or any of the other DIP Financing Documents, other than a representation and warranty that the Assignor is the legal and beneficial owner of the Assigned Interest and that the Assigned Interest is free and clear of any adverse claim; and (ii) makes no representation or warranty and assumes no responsibility with respect to (x) the financial condition of the Company, or (y) the performance or observance by the Company of any of its obligations under the Financing Agreement or any of the other DIP Financing Documents.

3. The Assignee (i) represents and warrants that it is legally authorized to enter into this Agreement, (ii) confirms that it has received a copy of the Financing Agreement and the other DIP Financing Documents as amended through the Effective Date, together with the copies of the most recent financial statements of the Company, and such other documents and information as the Assignee has deemed appropriate to make its own credit analysis, (iii) agrees that the Assignee will, independently and without reliance upon the Agent, the Assignor or any other Lender and based on such documents and information as the Assignee shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Financing Agreement and the other DIP Financing Documents, (iv) appoints and

authorizes the Agent to take such action as agent on the Assignee's behalf and to exercise such powers under the Financing Agreement and under the other DIP Financing Documents as are delegated to the Agent by the terms thereof, together with such powers as are reasonably incidental thereto, (v) agrees that the Assignee will be bound by the provisions of the Financing Agreement and under the other DIP Financing Documents and will perform in accordance with its terms all the obligations which by the terms of the Financing Agreement and under the other DIP Financing Documents are required to be performed by it as Lender, and (vi) if the Assignee is organized under the laws of a jurisdiction outside the United States, attaches the forms prescribed by the Internal Revenue Service of the United States certifying as to the Assignee's exemption from United States withholding taxes with respect to all payments to be made to the Assignee under the Financing Agreement or such other documents as are necessary to indicate that all such payments are subject to such tax at a rate reduced by an applicable tax treaty.

4. Following the execution of this Assignment and Transfer Agreement, such agreement will be delivered to the Agent for acceptance by the Agent, effective as of the Effective Date.

5. Upon such acceptance, from and after the Effective Date, the Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee, whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date. The Assignor and the Assignee shall make all other appropriate adjustments in payments for periods prior to the Effective Date made by the Agent or with respect to the making of this assignment directly between themselves.

6. From and after the Effective Date, (i) the Assignee shall be a party to the Financing Agreement and, to the extent provided in this Agreement, have the rights and obligations of a Lender thereunder and under the other DIP Financing Documents, and (ii) the Assignor shall, to the extent provided in this Agreement, relinquish its rights and be released from its obligations under the Financing Agreement and under the other DIP Financing Documents.

7. THIS ASSIGNMENT AND TRANSFER AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

ASSIGNOR:

ASSIGNEE:

By: _____

By: _____

Its: _____

Its: _____

Accepted by the Agent:

THE CIT GROUP/BUSINESS CREDIT,
INC., as Agent as aforesaid

By: _____
Its: _____

SCHEDULE 1

TO ASSIGNMENT AND TRANSFER AGREEMENT

Name of Assignor: _____

Name of Assignee: _____

Effective Date of Assignment: _____, 200__

Assigned Facility	Percentage Of Facility Assigned	Dollar Amount Assigned
Revolving Line of Credit	_____%	\$ _____

EXHIBIT B

FORM OF REVOLVING LOAN PROMISSORY NOTE

\$ _____

_____, 200__
Dallas, Texas

FOR VALUE RECEIVED, the undersigned, **ASARCO LLC**, a Delaware limited liability company (the "**Company**"), promises to pay to the order of _____ ("**Lender**"), at Lender's office located at _____, in lawful money of the United States of America and in immediately available funds, the principal amount of _____ Dollars (\$_____.00), or such lesser amount as may be advanced to the Company by Lender as Revolving Loans under the Financing Agreement (as defined below) and remain unpaid, on the Termination Date.

The Company further agrees to pay interest at said office, in like money, on the unpaid principal amount of Revolving Loans outstanding from time to time on the dates and at the rates specified in Article 7 of the Financing Agreement dated as of October __, 2005, among the Company, the Lenders that are parties thereto and The CIT Group/Business Credit, Inc., as Agent for the Lenders (the "**Financing Agreement**"). Capitalized terms used in this Note and defined in the Financing Agreement shall have the meanings given to such terms in the Financing Agreement unless otherwise specifically defined herein.

This Note is a Promissory Note referred to in the Financing Agreement, evidences the Revolving Loans made to the Company by the Lender thereunder, and is subject to, and entitled to, all provisions and benefits thereof, including optional and mandatory prepayment, in whole or in part, as provided therein.

Notwithstanding any other provision of this Note to the contrary, upon the occurrence of any Event of Default specified in the Financing Agreement, or upon termination of the Financing Agreement for any reason, all amounts then remaining unpaid on this Note may become, or be declared to be, at the sole election of Agent or the Required Lenders, immediately due and payable as provided in the Financing Agreement.

ASARCO LLC

By: _____
Its: _____

EXHIBIT C

COMPLIANCE CERTIFICATE

[Date]

The CIT Group/Business Credit, Inc.
5420 LBJ Freeway, Suite 200
Dallas, Texas 75240

RE: Financing Agreement dated as of _____, 2005 (the "**Financing Agreement**") among The CIT Group/Business Credit, Inc., as Agent (the "**Agent**"), the Lenders that are parties thereto (collectively, the "**Lenders**") and ASARCO LLC (the "**Company**")

Ladies and Gentlemen:

Reference is made to the Financing Agreement. Capitalized terms used herein and not specifically defined shall have the meanings given to such terms in the Financing Agreement.

Pursuant to Section 6.2(h) of the Financing Agreement, I enclose the Company's financial statements for the month ended _____, 200__ (the "**Reporting Month**") and the fiscal year-to-date period ended _____, 200__. As the _____ of the Company, I hereby certify to the Agent and the Lenders that: (a) the financial statement(s) fairly and accurately present in all material respects the Company's financial condition at the end of the Reporting Month, as well as the Company's operating results during the period covered by such financial statements, subject to the absence of footnotes and year-end audit adjustments; (b) during the Reporting Month, (i) to my knowledge, there has occurred no Default or Event of Default under the Financing Agreement, or, if I have knowledge that any Default or Event of Default has occurred during such period, a detailed description thereof is set forth on the Exhibit attached hereto, and (ii) the Company has not received any notice of cancellation with respect to its property insurance policies.

Very truly yours,

[attach appropriate exhibits]

SCHEDULE 1.1(A)

EXISTING INDEBTEDNESS

[to be completed by the Company]

SCHEDULE 1.1(B)

PERMITTED ENCUMBRANCES

SCHEDULE 1.1(C)

DESCRIPTION OF OPERATING REAL ESTATE

SCHEDULE 1.1(D)
TOLLING AGREEMENTS

SCHEDULE 3
COMMITMENTS

The CIT Group/Business Credit , Inc.	\$75,000,000.00
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SCHEDULE 6.1(B)

COMPANY AND COLLATERAL INFORMATION

Exact Company Name in State of Incorporation or Formation:

ASARCO LLC

State of Incorporation or Formation:

Delaware

Federal Tax I.D. No.:

EIN#

State Organization No.:

Address of Chief Executive Office:

Collateral Locations:

**1150 W. Seventh Avenue
Tucson, Pima County, AZ 85705**

**4201 West Pima Mine Road
Tucson, Pima County, AZ 85629**

**Off of Highway 177
Kearny, Pinal County, AZ 85237**

**100 Asarco Drive
Hayden, Gila County, AZ 85235**

**495 East 51st Avenue
Denver, Denver County, CO 80216-2098**

SCHEDULE 6.1(E)

**DESCRIPTION OF NON-COMPLIANCE WITH LAWS
AND FAILURE TO OBTAIN PERMITS AND LICENSES**

SCHEDULE 6.1(F)

ENVIRONMENTAL MATTERS

SCHEDULE 6.4(E)

EXISTING GUARANTIES

SCHEDULE 6.4(G)

EXISTING INVESTMENTS

SCHEDULE 6.4(H)
RELATED PARTY TRANSACTIONS