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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 21, 2006

The Hillman Companies, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-13293
(Commission File No.)

23-2874736
(I.R.S. Employer
Identification No.)

Registrant's telephone number, including area code: **(513) 851-4900**

Not Applicable
(Former name or former address,
if changed since last report.)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry Into a Material Definitive Agreement.

On July 21, 2006, The Hillman Companies, Inc. (the "Company") and its subsidiaries, Hillman Investment Company ("HIC") and The Hillman Group, Inc. (the "Borrower") entered into an Amended and Restated Credit Agreement ("Restated Credit Agreement") with Merrill Lynch Capital as Administrative Agent, Issuing Lender and Swingline Lender, JPMorgan Chase Bank as Syndication Agent and Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities Inc. as Joint Lead Arrangers and Joint Lead Bookrunners ("Lenders"). The Restated Credit Agreement replaced the existing March 31, 2004 Credit Agreement ("Senior Credit Agreement") between the Company, HIC, Borrower and the Lenders.

The terms of the Restated Credit Agreement provide for a \$275 million facility that includes a \$40 million revolving facility and a \$235 million term loan facility. Significant changes to the Senior Credit Agreement include (i) an increase in borrowings under the term loan of \$22.3 million to \$235 million (ii) a reduction in the interest rate margin applied to term loans of .25% (iii) reduction in the leverage ratio of 0.25 turns and (iv) a reduction in the interest coverage ratio to 2.5. A copy of the Restated Credit Agreement is attached hereto as Exhibit 10.1.

Under the Restated Credit Agreement, loans bear interest at a base rate plus an applicable margin except for swingline loans which bear interest at a base rate. The base rate is equal to the prime rate plus the sum of 1/2 of 1% plus the Federal Funds Rate. The base rate for eurodollar loans is based on the London Interbank Offered Rate. The applicable margin varies from 2.25% to 3.0 % based on the Borrower's leverage ratio. The Restated Credit Agreement provides for commitment fees at an annual rate of 0.50% on committed amounts not drawn.

The Restated Credit Agreement contains representations and warranties and covenants that are customary for facilities of this type. Repayment of amounts under the facility may only be accelerated under limited circumstances, which include events of default, including change of control events, not waived in writing by the lenders.

Also on July 21, 2006, the Company, HCI and Borrower entered into the Second Amendment to the Loan Agreement with Merrill Lynch Capital Corporation and Allied Capital Corporation dated March 31, 2004. The Second Amendment, among other things, (i) reduced interest expense from 13.5% to 10.0% (ii) allows for the increase in term loan borrowings under the terms of the Restated Credit Agreement from \$300 million to \$317 million (iii) provides for mandatory prepayment upon a change of control, and (iv) amends the required leverage ratio and interest coverage ratio. A copy of the Second Amendment is attached hereto as Exhibit 10.2.

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

See the description under Item 1.01 for a description of the Company's Restated Credit Agreement and Loan Agreement, which discussion is incorporated by reference into this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>
10.1	Amended and Restated Credit Agreement dated as of July 21, 2006
10.2	Second Amendment to Loan Agreement dated as of July 21, 2006

SIGNATURES

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

Date: July 31, 2006

THE HILLMAN COMPANIES, INC.

/s/ James P. Waters

James P. Waters
Chief Financial Officer

EXHIBIT LIST

EXHIBIT NUMBER

DESCRIPTION

10.1
10.2

Amended and Restated Credit Agreement dated as of July 21, 2006
Second Amendment to Loan Agreement dated as of July 21, 2006

\$275,000,000 AMENDED AND RESTATED CREDIT AGREEMENT

dated as of July 21, 2006

among

THE HILLMAN COMPANIES, INC.

HILLMAN INVESTMENT COMPANY

THE HILLMAN GROUP, INC.

THE LENDERS FROM TIME TO TIME PARTY HERETO,

MERRILL LYNCH CAPITAL,
as Administrative Agent, Issuing Lender and Swingline Lender,

JPMORGAN CHASE BANK,
as Syndication Agent,

and

MERRILL LYNCH & CO.,
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
and **J.P. MORGAN SECURITIES INC.**
as Joint Lead Arrangers and Joint Lead Bookrunners

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Exhibits:

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Exhibit N	—	Form of Acknowledgment and Agreement
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CREDIT AGREEMENT

This Amended and Restated Credit Agreement ("this Agreement") is dated as of July 21, 2006 and is among THE HILLMAN COMPANIES, INC. ("Holdings"), HILLMAN INVESTMENT COMPANY ("Intermediate Holdings"), THE HILLMAN GROUP, INC., (the "Borrower"), the banks and other financial institutions from time to time party hereto (the "Lenders"), MERRILL LYNCH CAPITAL, a division of Merrill Lynch Business Financial Services, Inc., as Administrative Agent, Issuing Lender and Swingline Lender, JPMORGAN CHASE BANK, as Syndication Agent, and MERRILL LYNCH & CO., MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED and J.P. MORGAN SECURITIES INC. together as the Joint Lead Arrangers and Joint Bookrunners.

WHEREAS, Holdings, Intermediate Holdings, the Borrower, the banks and other financial institutions from time to time party thereto, Merrill Lynch Capital, as Administration Agent, Issuing Lender and Swingline Lender, JP Morgan Chase Bank, as Syndication Agent and Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities Inc., as the Joint Lead Arrangers and Joint Bookrunners are parties to that certain \$257,500,000 Credit Agreement, dated as of March 31, 2004, as amended on March 31, 2006 (the "Existing Credit Agreement") pursuant to which the Lenders thereto made credit extensions to the Borrower, including a Term B Loan in an aggregate principal amount of \$217,500,000 (the "Existing Term B Loans");

WHEREAS, the Borrower desires that the existing lenders and other parties hereto agree to amend and restate the Existing Credit Agreement in its entirety to: (i) establish additional Term B Loans hereunder in an aggregate principal amount of \$22,393,750, and (ii) make certain other changes as more fully set forth herein, which amendment and restatement shall become effective upon the Effective Date as defined herein;

WHEREAS, the Borrower has agreed to secure all of its Finance Obligations under the Existing Credit Agreement as amended and restated hereby by reaffirming its grant to the Collateral Agent, for the benefit of the Secured Parties, of a Lien on substantially all of its assets, including a pledge of all of the Equity Interests of each of its Domestic Subsidiaries and 65% of all the Equity Interests of each of its Foreign Subsidiaries;

WHEREAS, it is the intent of the parties hereto that this Agreement not constitute a novation of the obligations and liabilities of the parties under the Existing Credit Agreement and that this Agreement amend and restate in its entirety the Existing Credit Agreement and re-evidence the Borrower's obligations outstanding on the Effective Date as contemplated hereby; and

WHEREAS, it is the intent of Credit Parties to confirm that all Finance Obligations of the Credit Parties under the other Credit Documents, as amended hereby, shall continue in full force and effect and that, from and after the Effective Date, all references to the "Credit Agreement" contained therein shall be deemed to refer to this Agreement.

ARTICLE I DEFINITIONS

Section 1.01 Defined Terms. The following terms, as used herein, have the following meanings:

“Accession Agreement” means a Credit Party Accession Agreement, substantially in the form of Exhibit I hereto, executed and delivered by an Additional Subsidiary Guarantor at any time following the Closing Date in accordance with Section 6.10(a).

“Acknowledgment and Agreement” means the Acknowledgment and Agreement substantially in the form of Exhibit N hereto.

“Acquisition” means the acquisition contemplated by the Acquisition Agreement.

“Acquisition Agreement” means the Agreement and Plan of Merger dated as of February 14, 2004 among AcquisitionCo, the Sellers and Target, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of this Agreement.

“AcquisitionCo” means HCI Acquisition Corp., a Delaware incorporated company.

“Acquisition Documents” means the Acquisition Agreement, including all exhibits and schedules thereto, and all other agreements, documents and instruments relating to the Acquisition, in each case as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of this Agreement.

“Additional Collateral Documents” has the meaning set forth in Section 6.10(b).

“Additional Letter of Credit” means any letter of credit issued hereunder by an Issuing Lender at any time following the Closing Date.

“Additional Subsidiary Guarantor” means each Person that becomes a Subsidiary Guarantor at any time following the Closing Date by execution of an Accession Agreement as provided in Section 6.10.

“Additional Term B Borrowing” means a Borrowing comprised of Additional Term B Loans and identified as such in the Notice of Borrowing with respect thereto.

“Additional Term B Commitment” means, with respect to any Incremental Term B Lender, the commitment of such Incremental Term B Lender to make an Additional Term B Loan on the Effective Date in a principal amount equal to such Incremental Term B Lender’s Additional Term B Commitment Percentage of the Additional Term B Committed Amount.

“Additional Term B Commitment Percentage” means, for each Incremental Term B Lender, the percentage identified as its Additional Term B Commitment Percentage on Schedule 1.01A, or in the applicable Assignment and Acceptance, as such percentage may be (i) reduced pursuant to Section 2.10(c) and (ii) modified in connection with any assignment made in accordance with the provisions of Section 10.06(b).

“Additional Term B Committed Amount” means \$22,393,750.

“Additional Term B Loan” means a Loan made under Section 2.01(b).

“Adjusted London Interbank Offered Rate” means, for the Interest Period for each Eurodollar Loan comprising part of the same Group, the quotient obtained (rounded upward, if necessary, to the next higher 1/100th of 1%) by dividing (i) the applicable London Interbank Offered Rate for such Interest Period by (ii) 1.00 minus the Eurodollar Reserve Percentage.

“Administrative Agent” means Merrill Lynch Capital, in its capacity as administrative agent for the Lenders hereunder and under the other Senior Finance Documents, and its successor or successors in such capacity.

“Administrative Agent’s Office” means the Administrative Agent’s office located at Merrill Lynch Capital, 222 N. LaSalle Street, 16th Floor, Chicago IL 60601, or such other office as may be designated by the Administrative Agent by written notice to the Borrower and the Lenders.

“Affiliate” means, with respect to any Person, (i) any Person that directly, or indirectly through one or more intermediaries, controls such Person (a Controlling Person) or (ii) any other Person which is controlled by or is under common control with a Controlling Person. As used herein, the term “control” means (i) with respect to any Person having voting shares or their equivalent and elected directors, managers or Persons performing similar functions, the possession, directly or indirectly, of the power to vote 10% or more of the Equity Interests having ordinary voting power of such Person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting shares or their equivalent, by contract or otherwise.

“Agent” means the Administrative Agent, the Syndication Agent, or the Collateral Agent and any successors and assigns in such capacity, and “Agents” means any two or more of them.

“Agreement” means (i) with respect to the period prior to the Effective Date, the Existing Credit Agreement and (ii) with respect to any period on or after the Effective Date, this Amended and Restated Credit Agreement, as it may be further amended, restated, modified or supplemented from time to time.

“Amended and Restated Fee Letter” means the fee letter dated on or about the date hereof and between the Borrower and the Administrative Agent.

“Anti-Terrorism Laws” means any Laws relating to terrorism or money-laundering, including, without limitation, (i) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, (ii) the U.S. Patriot Act, (iii) the International Emergency Economic Power Act, 50 U.S.C. §1701 et seq., (iv) the Bank Secrecy Act, (v) the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq. and (vi) any related rules and regulations of the U.S. Treasury Department’s Office of Foreign Assets Control or any other Governmental Authority, in each case as the same may be amended, supplemented, modified, replaced or otherwise in effect from time to time.

“Applicable Lending Office” means (i) with respect to any Lender and for each Type of Loan, the “Lending Office” of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan on Schedule 1.01E hereto or in any applicable Assignment and Acceptance pursuant to which such Lender became a Lender hereunder or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time (so long as no additional cost to the Borrower results) specify to the Administrative Agent and the Borrower as the office by which its Loans of such Type are to be made and maintained and (ii) with respect to any Issuing Lender and for each Letter of Credit, the “Lending Office” of such Issuing Lender (or of an Affiliate of such Issuing Lender) designated on the signature pages hereto or such other office of such Issuing Lender (or of an Affiliate of such Issuing Lender) as such Issuing Lender may from time to time specify (so long as no additional cost to the Borrower results) to the Administrative Agent and the Borrower as the office by which its Letters of Credit are to be issued and maintained.

“Applicable Margin” means, (i) for purposes of calculating the applicable interest rate for any day for any Term B Loan, (x) 3.00% in the case of Eurodollar Loans and 2.00% in the case of Base Rate Loans if the Senior Leverage Ratio as of the applicable Calculation Date exceeds 2.75 to 1.0 and (the pricing described in the foregoing clause (i)(x) constituting Pricing Level I with respect to Term B Loans for purposes of the next succeeding paragraph of this definition), (y) 2.75% in the case of Eurodollar Loans and 1.75% in the case of Base Rate Loans if the Senior Leverage Ratio as of the applicable Calculation Date equals or is less than 2.75 to 1.0 (the pricing described in the foregoing clause (i)(y) constituting Pricing Level II with respect to Term B Loans for purposes of the next succeeding paragraph), and (ii) for purposes of calculating the applicable interest rate for any day for any Revolving Loan, or any Swingline Loan or the applicable rate of the Letter of Credit Fee for any day for purposes of Section 2.11(b) (i), the appropriate applicable margin set forth below corresponding to the Leverage Ratio as of the most recent Calculation Date:

Pricing Level	Leverage Ratio	Revolving Loans and Swingline Loans		Letter of Credit fees
		Applicable Margin For Eurodollar Loans	Applicable Margin For Base Rate Loans	Applicable Margin For Letter of Credit Fee
I	³3.5 to 1.0	3.00%	2.00%	3.00%
II	<3.5 to 1.0 but ³2.5 to 1.0	2.75%	1.75%	2.75%
III	<2.5 to 1.0 but ³1.5 to 1.0	2.50%	1.50%	2.50%
IV	<1.5 to 1.0	2.25%	1.25%	2.25%

Each Applicable Margin shall be determined and adjusted quarterly on the date (each a ‘Calculation Date’) five Business Days after the date by which the Borrower is required to provide the consolidated financial information required by Section 6.01(a) or (b) and the officer’s certificate required by Section 6.01(c) for the fiscal quarter or year of the Borrower most recently ended prior to the Calculation Date; provided, however, that: (i) the initial Applicable Margin for Eurodollar Loans shall be 3.00%, in the case of Term B Loans, Revolving Loans and Letter of Credit Fees; (ii) the initial Applicable Margin for Base Rate Loans shall be 2.00%, in the case of Term B Loans, Revolving Loans and Letter of Credit Fees; (iii) the initial Applicable Margins determined in accordance with the immediately preceding clauses (i) and (ii) shall remain in effect until the first Calculation Date occurring after the end of the first full fiscal quarter of the Borrower ending at least three months after the Effective Date and, thereafter, each Applicable Margin for Term B Loans, Revolving Loans, Swingline Loans and Letter of Credit Fees shall be based on the Pricing Level (described in clause (i) (x) and (y) of the preceding paragraph, in the case of the Term B Loans and in the pricing grid as shown above, in the case of Revolving Loans, Swingline Loans and Letter of Credit Fees) corresponding to the Leverage Ratio (or the Senior Leverage Ratio in the case of Term B Loans) as of the last day of the most recently ended fiscal quarter or year of the Borrower preceding the applicable Calculation Date; and (iv) if the Borrower fails to provide the consolidated financial information required by Section 6.01(a) or (b) or the officer’s certificate required by Section 6.01(c) for the most recently ended fiscal quarter or year of the Borrower preceding any applicable Calculation Date, (A) each Applicable Margin for Term B Loans, Revolving Loans, Swingline Loans and Letter of Credit Fees from such Calculation Date shall be based on the Pricing Level (described in clause (i) (x) and (y) of the preceding paragraph, in the case of the Term B Loans and in the pricing grid as shown above, in the case of Revolving Loans, Swingline Loans and Letter of Credit Fees) one level above that theretofore in effect (with Pricing Level I being one level higher than Pricing Level II and so on) and in each case until such time as such consolidated financial information and the officer’s

certificate is provided, whereupon each Applicable Margin shall be based on the Pricing Level (described in clause (i) (x) and (y) of the foregoing paragraph, in the case of the Term B Loans and in the pricing grid as shown above, in the case of Revolving Loans and Letter of Credit Fees) corresponding to the Leverage Ratio (or the Senior Leverage Ratio in the case of Term B Loans) as of the last day of the most recently ended fiscal quarter or year of the Borrower preceding such Calculation Date. Each Applicable Margin shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Applicable Margins shall be applicable to all Loans and Letters of Credit then existing or subsequently made or issued.

“Approved Fund” means (i) with respect to any Lender, an entity (whether a corporation, partnership, limited liability company, trust or otherwise) that is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is managed by such Lender, its parent holding company or any of their respective subsidiaries, (ii) with respect to any Lender that is a fund that invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by any parent company of such Lender or any of their respective Subsidiaries and (iii) any special purpose funding vehicle described in Section 10.06(h).

“Asset Disposition” means any sale (including any Sale/Leaseback Transaction, whether or not involving a Capital Lease), lease (as lessor), transfer or other disposition (including any such transaction effected by way of merger or consolidation and including any sale or other disposition of Equity Interests of a Subsidiary, but excluding any sale or other disposition by way of Casualty or Condemnation) by any Group Company of any asset.

“Assignment and Acceptance” means an Assignment and Acceptance, substantially in the form of Exhibit C hereto, under which an interest of a Lender hereunder is transferred to an Eligible Assignee pursuant to Section 10.06(b).

“Attributable Debt” means, at any date (i) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (ii) in respect of any Synthetic Lease Obligation of any Person, the capitalized or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement were accounted for as a Capital Lease and (iii) in respect of any Sale/Leaseback Transaction described in Section 7.13, the lesser of (A) the present value, discounted in accordance with GAAP at the interest rate implicit in the related lease, of the obligations of the lessee for net rental payments over the remaining term of such lease (including any period for which such lease has been extended or may, at the option of the lessor be extended) and (B) the fair market value of the assets subject to such transaction.

“Availability Period” means the period from the Closing Date to the Revolving Termination Date.

“Bank Secrecy Act” means the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970, 31 U.S.C. 1051, et seq., as the same may be amended, supplemented, modified, replaced or otherwise in effect from time to time.

“Base Rate” means, for any day, a rate per annum equal to the higher of (i) the Prime Rate for such day and (ii) the sum of 1/2 of 1% plus the Federal Funds Rate for such day. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective on the effective date of such change in the Prime Rate or the Federal Funds Rate.

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

“Borrower” means The Hillman Group, Inc.

“Borrowing” has the meaning set forth in Section 1.04.

“Business Acquisition” means the acquisition by the Borrower or one or more of its Wholly-Owned Subsidiaries of all of the Equity Interests of, or all (or any division, line of business or substantial part for which financial statements or other financial information reasonably satisfactory to the Administrative Agent is available) of the assets or property of, another Person.

“Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required to close, except that (i) when used in Section 2.05 with respect to any action taken by or with respect to any Issuing Lender, the term “Business Day” shall not include any day on which commercial banks are authorized by law to close in the jurisdiction where such Issuing Lender’s Applicable Lending Office is located; and (ii) if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, or the Interest Period for, a Eurodollar Loan, or a notice by the Borrower with respect to any such borrowing, payment, prepayment or Interest Period, such day shall also be a day on which commercial banks are open for international business (including dealings in Dollar deposits) in London.

“Capital Lease” of any Person means any lease of (or other arrangement conveying the right to use) property (whether real, personal or mixed) by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person.

“Capital Lease Obligations” means, with respect to any Person, all obligations of such Person as lessee under Capital Leases, in each case taken at the amount thereof accounted for as liabilities in accordance with GAAP.

“Capitalization Documents” has the meaning set forth in Section 4.01(f).

“Cash Collateralize” means to pledge and deposit with or deliver to the Collateral Agent, for the benefit of the Issuing Lenders and the Revolving Lenders, as collateral for the LC Obligations, cash or deposit balances pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the Issuing Lenders.

“Cash Equivalents” means, at any date of determination:

(i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof provided that the full faith and credit of the United States is pledged in support thereof) or, with respect to any Foreign Subsidiary, an equivalent obligation of the government of the country in which such Foreign Subsidiary transacts business, in each case maturing within one year after such date;

(ii) time deposits and certificates of deposit, including eurodollar time deposits and, with respect to any Foreign Subsidiary, time deposits in the currency of any country in which such Foreign Subsidiary transacts business, of any commercial bank organized in the United States having capital and surplus in excess of \$100,000,000 or, with respect to any Foreign Subsidiary, a commercial bank organized under the laws of any other country in which

such Foreign Subsidiary transacts business having total assets in excess of \$100,000,000 (or its foreign currency equivalent) with a maturity date not more than one year from the date of acquisition;

(iii) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (i) above entered into with any bank meeting the qualifications specified in clause (ii) above and organized in the United States;

(iv) direct obligations issued by any state of the United States or any political subdivision of any state or any public instrumentality thereof maturing within 90 days after the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, then from such other nationally recognized rating service reasonably acceptable to the Administrative Agent);

(v) commercial paper issued by the parent corporation of any commercial bank organized in the United States having capital and surplus in excess of \$100,000,000, or, with respect to any Foreign Subsidiary, a commercial bank organized under the laws of any other country in which such Foreign Subsidiary transacts business having total assets in excess of \$100,000,000 (or its foreign currency equivalent), and commercial paper issued by others having one of the two highest ratings obtainable from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, then from such other nationally recognized rating services reasonably acceptable to the Administrative Agent) and in each case maturing within one year after the date of acquisition;

(vi) overnight bank deposits and bankers' acceptances at any commercial bank organized in the United States having capital and surplus in excess of \$100,000,000 or with respect to any Foreign Subsidiary, a commercial bank organized under the laws of any other country in which such Foreign Subsidiary transacts business having total assets in excess of \$100,000,000 (or its foreign currency equivalent);

(vii) deposits available for withdrawal on demand with commercial banks organized in the United States having capital and surplus in excess of \$50,000,000 or, with respect to any Foreign Subsidiary, a commercial bank organized under the laws of any other country in which such Foreign Subsidiary transacts business having total assets in excess of \$50,000,000 (or its foreign currency equivalent); and

(viii) investments in money market funds substantially all of whose assets comprise securities of the types described in clauses (i) through (vii).

"Casualty" means any casualty, loss, damage, destruction or other similar loss with respect to real or personal property or improvements.

"Casualty Insurance Policy" means any insurance policy maintained by any Group Company covering losses with respect to Casualties.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any applicable law, rule, regulation or treaty, (ii) any change in any applicable law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

“Change of Control” means the occurrence of any of the following events:

(ix) (A) Holdings shall cease to own directly or indirectly 100% of the Common Stock Equity Interests of Intermediate Holdings, on a fully-diluted basis assuming the conversion and exercise of all outstanding Equity Equivalents (whether or not such securities are then currently convertible or exercisable), (B) the Investor Group shall cease to own directly or indirectly 51% of the outstanding Preferred Stock of Intermediate Holdings, (C) Intermediate Holdings shall cease to own directly or indirectly 100% of the Equity Interests of the Borrower, on a fully-diluted basis assuming the conversion and exercise of all outstanding Equity Equivalents (whether or not such securities are then currently convertible or exercisable), (D) the Investor Group shall cease to own beneficially (as defined in the Exchange Act), directly or indirectly, at least 51% of the outstanding voting Equity Interests of Holdings, (E) any “person” or “group” (as each such term is defined in the Exchange Act), other than the Sponsor Group, is or becomes the “beneficial owner” (as defined in the Exchange Act, except that a Person will be deemed to have beneficial ownership of all shares that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of a greater percentage of the voting Equity Interests of Holdings and the Preferred Stock of Intermediate Holdings, than the percentage of the voting Equity Interests of Holdings and Preferred Stock of Intermediate Holdings, then owned beneficially, directly or indirectly, by the Sponsor Group or (F) the failure at any time of the Investor Group to control, whether through the ownership of voting securities or by contract, a majority of the seats on the board of directors (or persons performing similar functions) of Holdings; or

(x) during any period of two consecutive calendar years, individuals who at the beginning of such period constituted the board of directors (or persons performing similar functions) of Holdings together with any new members of such board of directors (A) whose elections by such board of directors or whose nominations for election by the equityholders of Holdings was approved by a vote of a majority of the members of such board of directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved or by any new directors who were nominated to serve on behalf of the Investor Group or (B) elected or appointed by the Investor Group, cease for any reason to constitute a majority of the directors of Holdings still in office; or

(xi) a “change of control” or similar event (as defined in any debt instrument in excess of \$5 million) occurs.

“Class” has the meaning set forth in Section 1.04.

“Closing Date” means March 31, 2004, the date on which the Existing Term B Loans and other extensions of credit under the Existing Credit Agreement were made.

“Code” means the Internal Revenue Code of 1986, as amended, and any successor statute thereto, as interpreted by the rules and regulations issued thereunder, in each case as in effect from time to time.

“Collateral” means all of the property which is subject or is purported to be subject to the Liens granted by the Collateral Documents.

“Collateral Agent” means Merrill Lynch Capital, in its capacity as collateral agent for the Finance Parties under the Collateral Documents, and its successor or successors in such capacity.

“Collateral Documents” means, collectively, the Security Agreement, the Pledge Agreement, the Depositary Bank Agreements, each Mortgage, any Additional Collateral Documents, any additional pledges, security agreements, patent, trademark or copyright filings or mortgages required to be delivered pursuant to the Finance Documents and any instruments of assignment, control agreements, lockbox letters or other instruments or agreements executed pursuant to the foregoing.

“Commitment” means (i) with respect to each Lender, its Revolving Commitment and/or its Term B Commitment, as and to the extent applicable, (ii) with respect to each Issuing Lender, its LC Commitment and (iii) with respect to the Swingline Lender, the Swingline Commitment, in each case as set forth on Schedule 1.01A or in the applicable Assignment and Acceptance as its Commitment of the applicable Class, as any such amount may be increased or decreased from time to time pursuant to this Agreement.

“Commitment Fee” has the meaning set forth in Section 2.11(a).

“Common Stock” means the common stock of either Holdings, Intermediate Holdings, the Borrower or any of its Subsidiaries.

“Computer Hardware” means all computer and other electronic data processing hardware of a Credit Party, whether now or hereafter owned, licensed or leased by such Credit Party, including, without limitation, all integrated computer systems, central processing units, memory units, display terminals, printers, features, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories, peripheral devices and other related computer hardware, all documentation, flowcharts, logic diagrams, manuals, specifications, training materials, charts and pseudo codes associated with any of the foregoing and all options, warranties, services contracts, program services, test rights, maintenance rights, support rights, renewal rights and indemnifications relating to any of the foregoing.

“Condemnation” means any taking by a Governmental Authority of property or assets, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation.

“Condemnation Award” means all proceeds of any Condemnation or transfer in lieu thereof.

“Consolidated Adjusted Working Capital” means at any date the excess of (i) Consolidated Current Assets (excluding (A) cash and Cash Equivalents classified as such in accordance with GAAP and (B) deferred taxes calculated in accordance with GAAP) over (ii) Consolidated Current Liabilities (excluding (A) the current portion of any Consolidated Funded Debt, (B) the aggregate principal amount of outstanding Revolving Loans, (C) accrued and unpaid interest on any Consolidated Funded Debt and/or Revolving Loans and (D) deferred taxes calculated in accordance with GAAP).

“Consolidated Capital Expenditures” means for any period the aggregate amount of all expenditures (whether paid in cash or other consideration or accrued as a liability) that would, in accordance with GAAP, be included as additions to property, plant and equipment and other capital expenditures of Holdings and its Consolidated Subsidiaries for such period, as the same are or would be set forth in a consolidated statement of cash flows of Holdings and its Consolidated Subsidiaries for such period (including the amount of assets leased under any Capital Lease), but excluding (to the extent that they would otherwise be included) (i) any such expenditures made for the replacement or restoration of assets in amounts not exceeding the aggregate amount of Insurance Proceeds or Condemnation Award with respect to the asset or assets being replaced or restored, (ii) for purposes of Section 7.14 only, capital

expenditures for Permitted Business Acquisitions, (iii) any such expenditures made with proceeds of a Qualifying Equity Issuance, (iv) any such expenditures to the extent Holdings or any of its Consolidated Subsidiaries has received reimbursement in cash from a third party other than Holdings or one or more of its Consolidated Subsidiaries and (v) capitalized interest; provided, however, that Consolidated Capital Expenditures for any fiscal quarter shown on Schedule 1.01G hereto shall be deemed to equal the applicable amount set forth opposite such fiscal quarter on Schedule 1.01G.

“Consolidated Cash Interest Expense” means for any period Consolidated Interest Expense that has been paid in cash for such period, or any cash interest that is paid in such period for which the interest expense was accrued in a prior period in accordance with GAAP, other than (to the extent, but only to the extent, included in the determination of Consolidated Interest Expense for such period in accordance with GAAP and paid in cash for such period), (i) amortization of debt discount and debt issuance fees, (ii) any fees (including underwriting fees and expenses) paid in connection with the consummation of the Transaction or Permitted Business Acquisitions, (iii) any payments made to obtain Derivatives Agreements, (iv) any agent or collateral monitoring fees paid or required to be paid pursuant to any Finance Document, (v) the actual or implied interest component of any consulting payments and (vi) annual agency fees, unused line fees and letter of credit fees and expenses paid hereunder; provided, however, that Consolidated Cash Interest Expense for any fiscal quarter shown on Schedule 1.01G hereto shall be deemed to equal the applicable amount set forth opposite such fiscal quarter on Schedule 1.01G.

“Consolidated Cash Tax Expense” means for any period the aggregate Federal, state, local and foreign income, franchise, state single business unitary and similar taxes that have been paid in cash by Holdings and its Consolidated Subsidiaries for such period; provided, however, that Consolidated Cash Tax Expense for any fiscal quarter shown on Schedule 1.01G hereto shall be deemed to equal the applicable amount set forth opposite such fiscal quarter on Schedule 1.01G.

“Consolidated Current Assets” means at any date the consolidated current assets of Holdings and its Consolidated Subsidiaries determined as of such date.

“Consolidated Current Liabilities” means at any date the consolidated current liabilities of Holdings and its Consolidated Subsidiaries determined as of such date.

“Consolidated Debt” means at any date the Debt of Holdings and its Consolidated Subsidiaries, determined on a consolidated basis as of such date.

“Consolidated EBITDA” means for any period the sum of (i) Consolidated Net Income for such period (excluding therefrom (x) any extraordinary, or non-cash unusual or non recurring items of gain or loss, (y) any gain or loss from discontinued operations and (z) any gain or loss attributable to Asset Dispositions made other than in the ordinary course of business), plus (ii) to the extent not otherwise included in the determination of Consolidated Net Income for such period, all proceeds of business interruption insurance policies, if any, received during such period plus (iii) (without duplication) an amount which, in the determination of Consolidated Net Income for such period, has been deducted for (A) Consolidated Interest Expense, (B) provisions for Federal, state, local and foreign income, franchise, state single business unitary and similar taxes, (C) depreciation, amortization (including, without limitation, amortization of goodwill and other intangible assets), impairment of goodwill and other non-cash charges or expenses (excluding any such non-cash charge to the extent that it represents amortization of a prepaid cash expense that was paid in a prior period), (D) non-cash compensation expense, or other non-cash expenses or charges, arising from the sale of stock, the granting of stock options, the granting of stock appreciation rights and similar arrangements (including any repricing, amendment, modification, substitution or change of any such stock, stock option, stock appreciation rights or similar arrangements), (E) non-cash rent expense, (F) any financial advisory fees,

accounting fees, legal fees and other similar advisory and consulting fees and related out-of-pocket expenses of the Borrower incurred as a result of the Transaction, all determined in accordance with GAAP, eliminating any increase or decrease in income resulting from non-cash accounting adjustments made in connection with the Acquisition, (G) Transaction related expenditures (including cash charges in respect of strategic market reviews, management bonuses, including payments under the sale bonus program, of up to \$1,510,000.00 in aggregate, early retirement of Debt, restructuring, consolidation, severance or discontinuance of any portion of operations, employees and/or management) described on Schedule 1.01B, (H) expenses incurred by Holdings or any Consolidated Subsidiary to the extent reimbursed in cash by a third party other than Holdings or one or more of its Consolidated Subsidiaries, (I) fees and expenses in connection with the exchange of the Subordinated Debentures, (J) unrealized losses on Derivatives Agreements, (K) losses from foreign currency adjustments, (L) losses in respect of pension or other post-retirement benefits or pension assets, (M) write-offs of deferred financing costs, (N) expenses in respect of earn-out obligations (O) any financial advisory fees, accounting fees, legal fees and similar advisory and consulting fees and related out-of-pocket expenses of the Borrower and its Consolidated Subsidiaries incurred as a result of Permitted Business Acquisitions, all determined in accordance with GAAP and in each case eliminating any increase or decrease in income resulting from non-cash accounting adjustments made in connection with the related Permitted Business Acquisition and (P) expenses relating to the granting and exercising of management options on or prior to the Closing Date, minus (iv) any amount which, in the determination of Consolidated Net Income for such period, has been added for any non-cash income or non-cash gains, all as determined in accordance with GAAP minus (v) the aggregate amount of cash payments made during such period in respect of any non-cash accrual, reserve or other non-cash charge or expense accounted for in a prior period and not otherwise reducing Consolidated Net Income for such period, provided, however, that Consolidated EBITDA for any fiscal quarter shown on Schedule 1.01G hereto shall be deemed to equal the applicable amount set forth opposite such fiscal quarter on Schedule 1.01G; and provided, further, that Consolidated EBITDA for the fiscal quarter during which the Closing Date occurs shall be calculated on a Pro-Forma Basis by reducing Consolidated Net Income for such quarter by the aggregate amount of management fees payable to the Sponsor in respect of such quarter or which would have been payable in respect of such quarter if the Closing Date had occurred on the first day of such quarter, each such pro-forma reduction to be in the applicable amount shown therefor for such quarter on Schedule 1.01G.

For purposes of calculating Consolidated EBITDA for any period of four consecutive fiscal quarters (each, a "Reference Period") pursuant to any determination of the Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio, if during such Reference Period (or in the case of pro-forma calculations, during the period from the last day of such Reference Period to and including the date as of which such calculation is made) any Group Company shall have made an Asset Disposition or a series of Asset Dispositions involving assets comprising all or substantially all of an operating unit of a business or constituting all or substantially all of the common stock of a Subsidiary or made a Permitted Business Acquisition, Consolidated EBITDA for such Reference Period shall be calculated after giving effect thereto on a Pro-Forma Basis, giving effect to projected or anticipated cost savings permitted or required by regulations S-X or S-K under the Securities Act or otherwise agreed to by the Administrative Agent in its reasonable discretion after consultation with the Borrower.

"Consolidated Fixed Charges" means, for any period, the sum of (i) Consolidated Cash Interest Expense for such period plus (ii) Consolidated Scheduled Debt Payments for such period plus (iii) Consolidated Cash Tax Expense for such period.

"Consolidated Funded Debt" means at any date the Funded Debt of Holdings and its Consolidated Subsidiaries as of such date, determined on a consolidated basis in accordance with GAAP.

“Consolidated Interest Expense” means, for any period, the total interest expense, whether paid or accrued in such period and whether or not capitalized in such period, (including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments under Capital Leases (regardless of whether accounted for as interest expense under GAAP), all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptances and net costs in respect of Derivatives Obligations constituting interest rate swaps, collars, caps or other arrangements requiring payments contingent upon interest rates of Holdings and its Consolidated Subsidiaries), net of interest income, in each case determined on a consolidated basis for such period.

“Consolidated Net Income” means, for any period, the net income (or net loss) after taxes of Holdings and its Consolidated Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded from the calculation of Consolidated Net Income for any period (i) the income (or loss) of any Person in which any other Person (other than Holdings or any of its Wholly-Owned Consolidated Subsidiaries) has an ownership interest, except to the extent that any such income is actually received in cash by Holdings or such Wholly-Owned Consolidated Subsidiary in the form of Restricted Payments during such period, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Consolidated Subsidiary of Holdings or is merged with or into or consolidated with Holdings or any of its Consolidated Subsidiaries or that Person’s assets are acquired by Holdings or any of its Consolidated Subsidiaries, except as provided in the definitions of Consolidated EBITDA and “Pro-Forma Basis” herein and (iii) the income of any Subsidiary of Holdings to the extent that the declaration or payment of Restricted Payments or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary.

“Consolidated Scheduled Debt Payments” means, for any period, the sum of all scheduled payments of principal on the Loans and all other Consolidated Funded Debt (including, without limitation, the principal component of Capital Lease Obligations and Purchase Money Debt) paid or payable during such period), but excluding payments due on Revolving Loans and Swingline Loans during such period; provided that Consolidated Scheduled Debt Payments for any period shall not include voluntary prepayments of Consolidated Funded Debt, mandatory prepayments of the Term B Loans pursuant to Section 2.09(b) or other mandatory prepayments (other than by virtue of scheduled amortization) of Consolidated Funded Debt (but Consolidated Scheduled Debt Payments for a period shall be adjusted to reflect the effect on scheduled payments of principal for such period of the application of any prepayments of Consolidated Funded Debt during or preceding such period); provided, however, that Consolidated Scheduled Debt Payments for any fiscal quarter shown on Schedule 1.01G hereto shall be deemed to equal the applicable amount set forth opposite such fiscal quarter on Schedule 1.01G.

“Consolidated Subsidiary” means with respect to any Person at any date any Subsidiary of such Person or other entity the accounts of which would be consolidated with those of such Person in its consolidated financial statements if such statements were prepared as of such date in accordance with GAAP.

“Consolidated Total Assets” means at any date the total consolidated assets of Holdings and its Consolidated Subsidiaries determined as of such date.

“Copyright” means any of the following, whether now existing or hereafter arising, created or acquired: (i) all common law and/or statutory rights in all copyrightable subject matter under the laws of the United States or any other country (whether or not the underlying works of authorship have been published); (ii) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, recordings, supplemental, derivative or

collective work registrations and pending applications for registrations in the United States Copyright Office or any other country; (iii) all computer programs, web pages, computer data bases and computer program flow diagrams, including all source codes and object codes related to any or all of the foregoing; (iv) all tangible property embodying or incorporating any or all of the foregoing, whether in completed form or in some lesser state of completion, and all masters, duplicates, drafts, versions, variations and copies thereof, in all formats; (v) all claims for, and rights to sue for, past, present and future infringement of any of the foregoing; (vi) all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing, including, without limitation, damages and payments for past, present or future infringements thereof and payments and damages under all Copyright Licenses in connection therewith; (vii) all rights in any of the foregoing, whether arising under the laws of the United States or any foreign country or otherwise, to copy, record, synchronize, broadcast, transmit, perform and/or display any of the foregoing or any matter which is the subject of any of the foregoing in any manner and by any process now known or hereafter devised; and (viii) the name and title of each Copyright item and all rights of any Credit Party to the use thereof, including, without limitation, rights protected pursuant to trademark, service mark, unfair competition, anti-cybersquatting and/or the rules and principles of any other applicable statute, common law or other rule or principle of law now existing or hereafter arising.

“Copyright License” means any agreement now or hereafter in existence granting to any Credit Party any rights, whether exclusive or non-exclusive, to use another Person’s copyrights or copyright applications, or pursuant to which any Credit Party has granted to any other Person, any right, whether exclusive or non-exclusive, with respect to any Copyright, whether or not registered.

“Credit Exposure” has the meaning set forth in the definition of “Required Lenders” in this Section 1.01.

“Credit Extension” means a Borrowing or the issuance, renewal or extension of a Letter of Credit.

“Credit Party” means each of Holdings, Intermediate Holdings, the Borrower and each Subsidiary Guarantor, and “Credit Parties” means any combination of the foregoing.

“Debt” of any Person means at any date, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (iv) all obligations, other than intercompany items, of such Person to pay the deferred purchase price of property or services (other than trade accounts and accrued expenses arising in the ordinary course of business), (v) the Attributable Debt of such Person in respect of Capital Lease Obligations, (vi) (other than the Management Put Rights up to a maximum aggregate amount of \$8,000,000) all obligations of such Person to purchase securities or other property which arise out of or in connection with the sale of the same or substantially similar securities or property and which mature or otherwise become non-contingent on or prior to the later of 90 days after the Revolving Termination Date and the Term B Maturity Date, (vii) all non-contingent obligations (and, solely for purposes of Section 7.01 and Section 8.01(c), all contingent obligations) of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, bankers’ acceptance or similar instrument, (viii) all obligations of others secured by (or for which the holder of such obligations has an existing right, contingent or otherwise, to be secured by) a Lien on, or payable out of the proceeds of production from, any property or asset of such Person, whether or not such obligation is assumed by such Person; provided that the amount of any Debt of others that constitutes Debt of such Person solely by reason of this clause

(viii) shall not for purposes of this Agreement exceed the greater of the book value or the fair market value of the properties or assets subject to such Lien, (ix) all Guaranty Obligations of such Person in respect of Debt of another Person, (x) all Debt Equivalents of such Person, (xi) all Derivatives Obligations of such Person (determined at their then respective Derivatives Termination Values) and (xii) the Debt of any other Person (including any partnership in which such Person is a general partner and any unincorporated joint venture in which such Person is a joint venturer) to the extent such Person would be liable therefor under applicable law or any agreement or instrument by virtue of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Debt provide that such person shall not be liable therefore; provided (i) Debt shall not include (x) earn out obligations until matured or earned or employee consulting agreements and (y) for the purposes only of Section 7.17, the Derivatives Termination Value, and (ii) that the amount of any Limited Recourse Debt of any Person shall be equal to the lesser of (A) the aggregate principal amount of such Limited Recourse Debt for which such Person provides credit support of any kind (including any undertaking agreement or instrument that would constitute Debt), is directly or indirectly liable as a guarantor or otherwise or is the lender and (B) the fair market value of any assets securing such Debt or to which such Debt is otherwise recourse.

"Debt Equivalents" of any Person means any Equity Interest of such Person which by its terms (or by the terms of any security for which it is convertible or for which it is exchangeable or exercisable), or upon the happening of any event or otherwise (including an event which would constitute a Change of Control but only to the extent such an event occurs), (A) matures or is mandatorily redeemable or subject to any mandatory repurchase requirement, pursuant to a sinking fund or otherwise, (B) is convertible into or exchangeable for Debt or Debt Equivalents or (C) is redeemable or subject to any repurchase requirement arising at the option of the holder thereof, in each case, in whole or in part, on or prior to the first anniversary of the latest of the Revolving Termination Date or the Term B Maturity Date.

"Debt Issuance" means the issuance by any Group Company of any Debt.

"Default" means any condition or event which constitutes an Event of Default or which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"Defaulting Lender" means at any time any Lender that, within one Business Day of when due, (i) has failed to make a Loan or purchase a Participation Interest in a Swingline Loan or an LC Obligation required pursuant to the terms of this Agreement, (ii) other than as set forth in clause (i) above, has failed to pay to any Agent or any Lender an amount owed by such Lender pursuant to the terms of the Agreement or any other Senior Finance Document unless such amount is subject to a good faith dispute or (iii) has been deemed insolvent or has become subject to a receivership or insolvency event.

"Depository Bank Agreement" means an agreement between a Credit Party and any bank or other depository institution, substantially in the form of Exhibit D to the Security Agreement, as the same may be amended, modified or supplemented from time to time including, without limitation, those Depository Bank Agreements entered into on or about the Closing Date.

"Derivatives Agreement" means (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts or any other similar

transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement.

“Derivatives Creditor” means any Lender or any Affiliate of any Lender from time to time party to one or more Derivatives Agreements permitted hereunder with a Credit Party (even if any such Lender for any reason ceases after the execution of such agreement to be a Lender hereunder), and its successors and assigns, and “Derivatives Creditors” means any two or more of them, collectively.

“Derivatives Obligations” of any Person means all obligations (including, without limitation, any amounts which accrue after the commencement of any bankruptcy or insolvency proceeding with respect to such Person, whether or not allowed or allowable as a claim under any bankruptcy or insolvency proceeding) of such Person in respect of any Derivatives Agreement, excluding any amounts which such Person is entitled to set-off against its obligations under applicable law.

“Derivatives Termination Value” means, at any date and in respect of any one or more Derivatives Agreements, after taking into account the effect of any legally enforceable netting agreements relating to such Derivatives Agreements, (i) for any date on or after the date such Derivatives Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (ii) for any date prior to the date referenced in clause (i), the amount(s) determined as the mark-to-market value(s) for such Derivatives Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Derivatives Agreements (which may include any Lender).

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

“Domestic Subsidiary” means with respect to any Person each Subsidiary of such Person which is incorporated under the laws of the United States or any state thereof, and the District of Columbia, and “Domestic Subsidiaries” means any two or more of them.

“Effective Date” means the date this Agreement becomes effective in accordance with Section 10.18.

“Effective Date Certificate” means an Effective Date Certificate substantially in the form of Exhibit M.

“Eligible Assignee” means (i) any Lender, (ii) any Affiliate of a Lender, (iii) any Approved Fund and (iv) any other commercial bank, finance company, insurance company or other financial institution or fund (other than a natural Person) approved by (A) the Administrative Agent, (B) in the case of any assignment of a Revolving Commitment, the Issuing Lenders and the Swingline Lender and (C) unless a Default or an Event of Default has occurred and is continuing at the time any assignment is effected pursuant to Section 10.06(b), the Borrower (each such approval not to be unreasonably withheld, conditioned or delayed and any such approval required of the Borrower to be deemed given by the Borrower if no objection from the Borrower is received by the assigning Lender and the Administrative Agent within five Business Days after notice of such proposed assignment has been provided by the assigning Lender to the Borrower); provided, however, that (i) Holdings and its Affiliates shall not qualify as Eligible Assignees; and (ii) that no Person shall be an Eligible Assignee if such Person appears on the list of Specially Designated Nationals and Blocked Persons prepared by the U.S. Treasury

Department's Office of Foreign Assets Control or the purchase by such Person of an assignment or the performance by any Agent of its duties under the Senior Finance Documents with respect to such Person violates or would violate any Anti-Terrorism Law.

"Employee Benefit Arrangements" means, in any jurisdiction, the benefit schemes or arrangements in respect of any employees or past employees operated by any Group Company or in which any Group Company participates and which provide benefits on retirement, ill-health, injury, death or voluntary withdrawal from or termination of employment, including termination indemnity payments and life assurance and post-retirement medical benefits.

"Environmental Laws" means all Laws relating in any way to the protection of the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of remediation, fines, penalties or indemnities), of any Group Company directly or indirectly resulting from or based on (i) violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Material, (iii) exposure to any Hazardous Material, (iv) the release or threatened release of any Hazardous Material into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Equivalents" means with respect to any Person any rights, warrants, options, convertible securities, exchangeable securities, indebtedness or other rights, in each case exercisable for or convertible or exchangeable into, directly or indirectly, Equity Interests of such Person or securities exercisable for or convertible or exchangeable into Equity Interests of such Person, whether at the time of issuance or upon the passage of time or the occurrence of some future event.

"Equity Interests" means all shares of capital stock, partnership interests (whether general or limited), limited liability company membership interests, beneficial interests in a trust and any other interest or participation that confers on a Person the right to receive a share of profits or losses, or distributions of assets, of an issuing Person, but excluding any debt securities convertible into such Equity Interests.

"Equity Issuance" means (i) any sale or issuance by any Group Company to any Person other than Holdings or a Subsidiary of Holdings of any Equity Interests or any Equity Equivalents (other than any such Equity Equivalents that constitute Debt) and (ii) the receipt by any Group Company of any cash capital contributions, whether or not paid in connection with any issuance of Equity Interests of any Group Company, from any Person other than Holdings or a Subsidiary of Holdings.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any rule or regulation issued thereunder.

"ERISA Affiliate" means each business or entity which is or was a member of a "controlled group of corporations", under "common control" or a member of an "affiliated service group" with a Group Company within the meaning of Section 414(b), (c) or (m) of the Code, or required or was required to be aggregated with a Group Company under Section 414(o) of the Code or is or was under "common control" with a Group Company, within the meaning of Section 4001(a)(14) of ERISA.

"ERISA Event" means:

- (i) a reportable event as defined in Section 4043 of ERISA and the regulations issued under such Section with respect to a Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event;
- (ii) the requirements of Section 4043(b) of ERISA apply with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of any Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following 30 days;
- (iii) (x) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Plan (whether or not waived in accordance with Section 412(d) of the Code), the application for a minimum funding waiver under Section 303 of ERISA with respect to any Plan, or the failure to make by its due date a required installment under Section 412(m) of the Code with respect to any Plan; or (y) the failure to make any required contribution to a Multiemployer Plan;
- (iv) the incurrence of any material liability by a Group Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in Section 3 of ERISA), or the occurrence or existence of any event, transaction or condition that could reasonably be expected to result in the incurrence of any such material liability by a Group Company or any ERISA Affiliate, or in the imposition of any lien on any of the rights, properties or assets of a Group Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions of the Code or to Section 401(a)(29) or 412 of the Code;
- (v) the provision by the administrator of any Plan pursuant to Section 4041(a)(2) of ERISA of a notice (or the reasonable expectation of such provision of notice) of intent to terminate such Plan in a distress termination described in Section 4041(c) of ERISA, the institution by the PBGC of proceedings to terminate any Plan or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee by the PBGC to administer, any Plan;
- (vi) the withdrawal of a Group Company or ERISA Affiliate in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any material liability therefor, or the receipt by a Group Company or ERISA Affiliate of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA;
- (vii) the imposition of material liability (or the reasonable expectation thereof) on a Group Company or ERISA Affiliate pursuant to Section 4062, 4063, 4064 or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA;
- (viii) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against a Group Company in connection with any Plan;
- (ix) the receipt from the United States Internal Revenue Service of notice of the failure of any Plan (or any Employee Benefit Arrangement intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust

forming part of any Plan to qualify for exemption from taxation under Section 501(a) of the Code, and, with respect to Multiemployer Plans, notice thereof to any Group Company; or

(x) the establishment or amendment by a Group Company of any Welfare Plan that provides post-employment welfare benefits in a manner that would increase the liability of a Group Company.

“Eurodollar Loan” means at any date a Loan which bears interest at a rate determined by reference to the Adjusted London Interbank Offered Rate.

“Eurodollar Reserve Percentage” means for any day that percentage (expressed as a decimal) which is in effect on such day, as prescribed by the Board of Governors of the Federal Reserve System (or any other entity succeeding to the functions currently performed thereby) for determining the maximum reserve requirement for a member bank of the Federal Reserve System in New York City with deposits exceeding five billion Dollars in respect of “Eurocurrency liabilities” (or in respect of any other category of liabilities which includes deposits by reference to which the interest rate on Eurodollar Loans is determined or any category of extensions of credit or other assets which includes loans by a non-United States office of any Lender to United States residents), whether or not a Lender has any Eurocurrency liabilities subject to such reserve requirement at that time. Eurodollar Loans shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credits for prorrations, exceptions or offsets that may be available from time to time to a Lender. The Adjusted London Interbank Offered Rate shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

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

“Evergreen Letter of Credit” has the meaning set forth in Section 2.05(c).

“Excess Cash Flow” means for any period an amount equal to (i) Consolidated EBITDA for such period plus (ii) all cash extraordinary, unusual or non recurring gains, if any, during such period (whether or not accrued in such period), plus (iii) (x) the decrease, if any, in Consolidated Adjusted Working Capital less (y) the decrease, if any, in the principal amount of Revolving Loans and Swingline Loans, in each case from the first day to the last day of such period, minus (iv) the amount, if any, which, in the determination of Consolidated Net Income for such period, has been included in respect of income or gain from Asset Dispositions of Holdings and its Consolidated Subsidiaries to the extent utilized or repay or prepay Loans pursuant to Section 2.09(b)(iv), minus (v) the aggregate amount (without duplication and in each case except to the extent paid, directly or indirectly, with proceeds of any Equity Issuance or Debt Issuance (other than Revolving Loans) by any Group Company) of (A) the sum of (x) cash payments during such period in respect of Consolidated Capital Expenditures allowed under Section 7.14 plus (y) to the extent amounts permitted to be paid during such period in respect of Consolidated Capital Expenditures are carried forward to the next succeeding period in accordance with Section 7.14(b), the aggregate amounts of all cash payments (not to exceed such permitted carryforward amount) in respect of such Consolidated Capital Expenditures made during the first 90 days of such next succeeding period (it being understood and agreed that any cash payments in respect of Consolidated Capital Expenditures deducted from Excess Cash Flow pursuant to this clause (v)(A) shall not thereafter be deducted pursuant to clause (v)(A)(x) above in the determination of Excess Cash Flow for the period during which such payments were actually paid), (B) cash payments during such period in respect of Permitted Business Acquisitions allowed under Section 7.06(a)(xiii), other permitted Investments allowed under Section 7.06(a)(xxi) and Permitted Joint Ventures allowed under Section 7.06(a)(xvii), (C) permitted optional prepayments of Debt (other than Subordinated Debt) during such period, (D) to the extent not included in clause (v) above, repayments or prepayments of the Revolving

Loans and Swingline Loans to the extent the Revolving Commitments and the Swingline Commitment are permanently reduced at the time of such payment, (E) earn-out payments paid in cash during such period, (F) the aggregate amount of all Restricted Payments actually paid in cash in accordance with this agreement by Holdings during such period, (G) the aggregate amount of all financial advisory fees, accounting fees, legal fees and other similar advisory and consulting fees and related out-of-pocket expenses incurred as a result of the Transaction or any Permitted Business Acquisition and actually paid in cash by Holdings and its Consolidated Subsidiaries during such period, in each case to the extent added to Consolidated Net Income in the determination of Consolidated EBITDA for such period, (H) Transaction related expenditures (including cash charges arising out of strategic market reviews, early extinguishment of Debt, management bonuses, restructuring, consolidation, severance or discontinuance of any portion of operations, employees and/or management) described on Schedule 1.01B and actually paid in cash by Holdings and its Consolidated Subsidiaries during such period, in each case to the extent added to Consolidated Net Income in the determination of Consolidated EBITDA for such period, (I) Consolidated Cash Interest Expense and, without duplication and only to the extent included in Consolidated Interest Expense for such period, any expenses identified in clauses (i) through (vi) of the definition of Consolidated Cash Interest Expense actually paid in cash by Holdings and its Consolidated Subsidiaries during such period, (J) Consolidated Cash Tax Expense actually paid by Holdings and its Consolidated Subsidiaries during such period, and (K) Consolidated Scheduled Debt Payments actually paid by Holdings and its Consolidated Subsidiaries during such period, minus (vi) all cash extraordinary, unusual or non-recurring losses, if any, during such period (whether or not accrued in such period), minus (vii) (x) the increase, if any, in Consolidated Adjusted Working Capital less (y) the increase, if any, in the principal amount of Revolving Loans and Swingline Loans, in each case from the first day to the last day of such period, minus (viii) to the extent included in the determination of Consolidated EBITDA for such period, amounts (whether positive or negative) derived from changes in foreign currency exchange rates during such period.

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

“Excluded Asset Disposition” means an Asset Disposition permitted pursuant to Section 7.05 other than Asset Dispositions pursuant to Sections 7.05(vii), (xiii), and (xv).

“Excluded Equity Issuance” means (i) any issuance by any Subsidiary of the Borrower of its Equity Interests to the Borrower or any other Subsidiary of the Borrower, (ii) the receipt by any Subsidiary of the Borrower of a capital contribution from the Borrower or a Subsidiary of the Borrower, (iii) any Qualifying Equity Issuance and (iv) any issuance of Equity Interests to qualify directors where required by applicable Law or to satisfy other requirements of applicable Law with respect to the ownership of Equity Interests of Foreign Subsidiaries.

“Excluded Taxes” means with respect to any Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (i) income or franchise taxes imposed on (or measured by) its net income by the United States or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its Applicable Lending Office is located, (ii) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located, and (iii) in the case of any Borrowing with respect to any Lender (other than an Eligible Assignee pursuant to a request by a Borrower under Section 2.10(d)), any withholding tax imposed by the jurisdiction in which the Borrower is located that is (A) imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement or (B) is attributable to such Lender’s failure to comply (other than as a result of a Change in Law) with Section 3.01(d) and Section 10.06(c), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new

lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Sections 3.01(a).

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

“Existing Letters of Credit” means the letters of credit that were issued before the Closing Date and described by date of issuance, letter of credit number, undrawn amount, names of beneficiary and date of expiry on Schedule 2.05, and “Existing Letter of Credit” means any one of them.

“Existing Term B Commitment” means, with respect to any Existing Term B Lender, the commitment of such Existing Term B Lender to have made an Existing Term B Loan in a principal amount equal to such Existing Term B Lender’s Existing Term B Commitment Percentage of the Existing Term B Loans.

“Existing Term B Commitment Percentage” means, for each Existing Term B Lender, the percentage identified as its Existing Term B Commitment Percentage on Schedule 1.01A, or in the applicable Assignment and Acceptance, as such percentage may be (i) reduced pursuant to Section 2.10(c) and (ii) modified in connection with any assignment made in accordance with the provisions of Section 10.06(b).

“Existing Term B Lender” means each Lender identified on Schedule 1.01A as having an Existing Term B Commitment and each Eligible Assignee which acquires a Term B Loan pursuant to Section 10.06(b) and their respective successors.

“Existing Term B Loans” has the meaning set forth in the recitals hereto.

“Failed Loan” has the meaning set forth in Section 2.03(e).

“Federal Funds Rate” means for any day the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Merrill Lynch Capital on such day on such transactions as determined by the Administrative Agent.

“Finance Document” means each Senior Finance Document and each Derivatives Agreement between one or more Credit Parties and a Derivatives Creditor evidencing Derivatives Obligations permitted hereunder, and “Finance Documents” means all of them, collectively.

“Finance Obligations” means, at any date, (i) all Senior Obligations and (ii) all Derivatives Obligations of a Credit Party permitted hereunder owed or owing to any Derivatives Creditor.

“Finance Party” means each Lender, the Swingline Lender, each Issuing Lender, each Derivatives Creditor, each Agent and each Indemnitee and their respective successors and assigns, and “Finance Parties” means any two or more of them, collectively.

“Fixed Charge Coverage Ratio” means, for any period, the ratio of (i) Consolidated EBITDA to (ii) Consolidated Fixed Charges for such period plus the aggregate amount of Consolidated Capital Expenditures for such period (exclusive of the portion thereof financed with (A) Capital Leases,

Purchase Money Debt or other Debt (exclusive of Loans) permitted by Section 7.01 incurred during such period or any Qualifying Equity Issuance or (B) Net Cash Proceeds of Asset Dispositions received during such period and not required to be applied to repay Loans or Cash Collateralize Letter of Credit Liabilities pursuant to Section 2.09(b) (iv).

“Foreign Pension Plan” means any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained or formerly established or maintained outside the United States by any Group Company primarily for the benefit of employees of any Group Company residing outside the United States, which plan, fund or other similar program provides or provided, or results or resulted in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“Foreign Subsidiary” means with respect to any Person any Subsidiary of such Person that is not a Domestic Subsidiary of such Person.

“Funded Debt” means, with respect to any Person, all Debt (including current maturities) of such Person (including, in respect of the Credit Parties, the Senior Obligations) that by its terms matures more than one year after the date of its creation or matures within one year from such date but is renewable or extendible, at the option of such Person, to a date more than one year after such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year after such date.

“GAAP” means at any time generally accepted accounting principles as then in effect in the United States, applied on a basis consistent (except for changes with which Holdings’s independent public accountants have concurred) with the most recent audited consolidated financial statements of Holdings and its Consolidated Subsidiaries previously delivered to the Lenders.

“Government Acts” has the meaning set forth in Section 2.05(o)(i).

“Governmental Authority” means any federal, state, local, provincial or foreign government, authority, agency, central bank, quasi-governmental or regulatory authority, court or other body or entity, and any arbitrator with authority to bind a party at law.

“Group Company” means any of Holdings, Intermediate Holdings, the Borrower or their respective Subsidiaries (regardless of whether or not consolidated with Holdings or the Borrower for purposes of GAAP), and “Group Companies” means all of them, collectively.

“Group of Loans” means at any time a group of Loans consisting of (i) all Loans which are Base Rate Loans at such time or (ii) all Loans which are Eurodollar Loans having the same Interest Period at such time; provided that, if a Loan of any particular Lender is converted to or made as a Base Rate Loan pursuant to Article III, such Loan shall be included in the same Group or Group of Loans from time to time as it would have been had it not been so converted or made.

“Guarantor” means each of Holdings and each Subsidiary Guarantor.

“Guaranty” means the Guaranty dated as of the Closing Date by Holdings, Intermediate Holdings, the Borrower and the Subsidiary Guarantors in favor of the Administrative Agent, as amended, modified or supplemented from time to time.

“Guaranty Obligation” means, with respect to any Person, without duplication, any obligation (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guarantying, intended to guaranty, or having the economic effect of guarantying, any Debt or other obligation of any other Person in any manner, whether direct or indirect, and including, without limitation, any obligation, whether or not contingent, (i) to purchase any such Debt or other obligation or any property constituting security therefor, (ii) to advance or provide funds or other support for the payment or purchase of such indebtedness or obligation or to maintain working capital, solvency or other balance sheet condition of such other Person (including, without limitation, maintenance agreements, comfort letters, take or pay arrangements, put agreements or similar agreements or arrangements) for the benefit of the holder of Debt or other obligation of such other Person, (iii) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of such Debt or other obligation or (iv) to otherwise assure or hold harmless the owner of such Debt or obligation against loss in respect thereof, it being understood and agreed that indemnification and similar reimbursement obligations entered into in the ordinary course of business in favor of the obligor on any such Debt or other obligation which are not enforceable by any holder of such Debt or other obligation and which do not otherwise constitute Debt hereunder shall not be deemed to constitute Guaranty Obligations for purposes of this Agreement and the other Senior Finance Documents. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the lesser of the outstanding principal amount or maximum principal amount of the Debt or other obligation in respect of which such Guaranty Obligation is made.

“Harbour Vest” means Harbour Vest Partners VI – Direct Fund, L.P., a Delaware limited partnership.

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

“Holdings” means The Hillman Companies, Inc., a Delaware corporation, and its successors.

“Holdings Stockholder Agreement” means the stockholders’ agreement dated as of the date of this Agreement, among Holdings and the Investor Group as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and this Agreement.

“Incremental Term B Lender” means each Lender identified on Schedule 1.01A as having an Additional Term B Commitment and each Eligible Assignee which acquires an Additional Term B Loan pursuant to Section 10.06(b) and their respective assigns.

“Indemnified Liabilities” has the meaning set forth in Section 10.05.

“Indemnitee” has the meaning set forth in Section 10.05.

“Insignificant Subsidiaries” means (i) as of the Effective Date, the Subsidiaries of Holdings listed on Schedule 1.01F hereto and, thereafter, (ii) any Subsidiary of Holdings which is formed or acquired after the Effective Date and designated as such by the Borrower; provided, however, that no Subsidiary of Holdings may remain, or be designated, as an Insignificant Subsidiary if the assets of such Subsidiary, when taken together with the assets of the other Insignificant Subsidiaries at such time exceed the lesser of (i) 3% Consolidated Total Assets or (ii) \$7,500,000 in asset value.

“Insurance Proceeds” means all insurance proceeds (other than business interruption insurance proceeds), damages, awards, claims and rights of action with respect to any Casualty.

“Intellectual Property” means all Patents, Trademarks, Copyrights, Software, Licenses, rights in intellectual property, goodwill, trade names, service marks, trade secrets, confidential or proprietary technical and business information, know-how, show-how, domain names, mask works, customer lists, vendor lists, subscription lists, data bases and related documentation, registrations, franchises and all other intellectual or other similar property rights.

“Intercompany Note” means a promissory note contemplated by Section 7.06(a)(ix), substantially in the form of Exhibit G hereto, and “Intercompany Notes” means any two or more of them.

“Interest Coverage Ratio” means for any period the ratio of (i) Consolidated EBITDA to (ii) Consolidated Cash Interest Expense for such period, provided however, that any interest expense under the Junior Debentures for any such period, shall be excluded from Consolidated Cash Interest Expense for the purpose of calculating the Interest Coverage Ratio.

“Interest Payment Date” means (i) as to Base Rate Loans, the last day of each March, June, September and December and the Maturity Date for Loans of the applicable Class and (ii) as to Eurodollar Loans, the last day of each applicable Interest Period and the Maturity Date for Loans of the applicable Class, and in addition where the applicable Interest Period for a Eurodollar Loan is greater than three months, then also the date three months from the beginning of the Interest Period and each three months thereafter.

“Interest Period” means with respect to each Eurodollar Loan, a period commencing on the date of borrowing specified in the applicable Notice of Borrowing or on the date specified in the applicable Notice of Extension/Conversion and ending one, two, three, six or, if available to all of the Lenders having Commitments or Loans of the applicable Class, and such Lenders give their prior written consent, nine or twelve months thereafter, as the Borrower may elect in the applicable notice; provided that:

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

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

(iii) no Interest Period in respect of Term B Loans may be selected which extends beyond a Principal Amortization Payment Date for Loans of the applicable Class unless, after giving effect to the selection of such Interest Period, the aggregate principal amount of Term B Loans of the applicable Class which are comprised of Base Rate Loans together with such Term B Loans comprised of Eurodollar Loans with Interest Periods expiring on or prior to such Principal Amortization Payment Date are at least equal to the aggregate principal amount of Term B Loans of the applicable Class due on such date;

(iv) no Interest Period in excess of one month may be elected at any time when a Default or an Event of Default is then in existence; and

(v) no Interest Period shall be elected which would end after the Maturity Date for Loans of the applicable Class.

“Intermediate Holdings” means Hillman Investment Company, a Delaware incorporated company.

“Intermediate Holdings Stockholder Agreement” means the stockholders’ agreement dated as of the date of this Agreement, among Intermediate Holdings, Holdings and the Investor Group as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and this Agreement.

“Investment” in any Person means (i) the acquisition (whether for cash, property, services, assumption of Debt, securities or otherwise) of assets, shares of Capital Stock, bonds, notes, debentures, time deposits or other securities of such Person, (ii) any deposit with, or advance, loan or other extension of credit to or for the benefit of such Person (other than deposits made in connection with the purchase of equipment or inventory in the ordinary course of business) or (iii) any other capital contribution to or investment in such Person, including by way of Guaranty Obligations of any Debt or other obligation of such Person, any support for a letter of credit issued on behalf of such Person incurred for the benefit of such Person or any release, cancellation, compromise or forgiveness in whole or in part of any Debt owing by such Person. The outstanding amount of any Investment shall be deemed to equal the difference of (i) the aggregate initial amount of such Investment less (ii) all returns of principal thereof or capital with respect thereto and all dividends and other distributions of income received in respect thereof and all liabilities expressly assumed by another Person (and with respect to which Holdings and its Subsidiaries, as applicable, shall have received a novation) in connection with the sale of such Investment.

“Investor Group” means the Sponsor Group, the OTHP, Harbour Vest, the Management Group and certain other investors identified to the Lead Arrangers prior to the Closing Date.

“Investor Preferred Equity Issuance” means the \$60,000,000 non-convertible accreting preferred stock of Intermediate Holdings issued to the Investors Group.

“Issuing Lender” means (i) Merrill Lynch Capital or a bank or trust company acceptable to Merrill Lynch Capital, in its capacity as Administrative Agent, as issuer of Letters of Credit under Section 2.05(b), and their respective successor or successors in such capacity; and (ii) each Lender listed in Schedule 2.05 hereto as the issuer of an Existing Letter of Credit;

“Junior Debentures” mean the junior subordinated debentures issued by Holdings to The Hillman Group Capital Trust (the “Junior Debentures Holders”) pursuant to the Junior Debentures Indenture, as such Junior Debentures may be amended, modified or supplemented from time to time in accordance with the provisions thereof and the limitations set forth herein.

“Junior Debentures Documents” means the Junior Debentures Indenture, in each case including all exhibits and schedules thereto, and all other agreements, documents and instruments relating to the Junior Debentures, in each case as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of this Agreement.

“Junior Debentures Indenture” means the indenture dated September 5, 1997 between Holdings and The Bank of New York as the trustee, as such Junior Debentures Indenture may be amended, modified or supplemented from time to time.

“Landlord Consent and Estoppel” means with respect to any Leased Mortgaged Property, a Landlord Consent and Estoppel with respect to such Leased Mortgaged Property, or similar letter, certificate or other instrument in writing from the lessor under the related lease, reasonably satisfactory in form and substance to the Lead Arrangers.

“Law” means any international, foreign, Federal, state or local statute, treaty, rule, guideline, regulation, ordinance, code, or administrative or judicial precedent or authority, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“LC Cash Collateral Account” has the meaning set forth in the Security Agreement.

“LC Commitment” means the commitment of one or more Issuing Lenders to issue Letters of Credit in an aggregate face amount at any one time outstanding (together with the amounts of any unreimbursed drawings thereon) of up to the LC Committed Amount.

“LC Committed Amount” has the meaning set forth in Section 2.05(b).

“LC Disbursement” means (i) a payment or disbursement made by an Issuing Lender pursuant to an Existing Letter of Credit, and/or (ii) a payment made by the Administrative Agent pursuant to an LC Support Agreement.

“LC Documents” means, with respect to any Letter of Credit or LC Support Agreement, such Letter of Credit or LC Support Agreement, any amendments thereto, any documents delivered in connection therewith, any application therefor and any agreements, instruments, guaranties or other documents (whether general in application or applicable only to such Letter of Credit or LC Support Agreement) governing or providing for (i) the rights and obligations of the parties concerned or at risk or (ii) any collateral security for such obligations.

“LC Obligations” means at any time, the sum of (i) the maximum amount which is, or at any time thereafter may become, available to be drawn under (A) Existing Letters of Credit then outstanding, and (B) Additional Letters of Credit to the extent subject to an LC Support Agreement, in each case assuming compliance with all requirements for drawings referred to in such Letters of Credit plus, without duplication (ii) the aggregate amount of all LC Disbursements not yet reimbursed by the Borrower as provided in Section 2.05(g) to the applicable Issuing Lenders or the Administrative Agent in respect of drawings under Letters of Credit or payments under LC Support Agreements, respectively, including any portion of any such obligation to which a Lender has become subrogated pursuant to Section 2.05(h).

“LC Support Agreement” has the meaning given to it in Section 2.05(b).

“Lead Arrangers” means Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities Inc. in their capacities as joint-lead arrangers and joint bookrunners.

“Leased Mortgaged Property” and “Leased Mortgaged Properties” have the respective meanings set forth in Section 4.01(k).

“Leaseholds” means with respect to any Person all of the right, title and interest of such Person as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

“Lender” means each bank or other lending institution listed on Schedule 1.01A, each Eligible Assignee that becomes a Lender pursuant to Section 10.06(b) and their respective successors and shall include, as the context may require, the Swingline Lender in such capacity and each Issuing Lender in such capacity.

“Lender Consent” means the Lender Consent to the Amendment and Restatement of the Credit Agreement in the form of Exhibit O hereto.

“Letter of Credit” means an Existing Letter of Credit or an Additional Letter of Credit, and “Letters of Credit” means any combination of the foregoing.

“Letter of Credit Fee” has the meaning set forth in Section 2.11(b);

“Letter of Credit Request” has the meaning set forth in Section 2.05(c).

“Leverage Ratio” means on any day the ratio of (i) Consolidated Funded Debt as of such date, less the aggregate amount outstanding under the Junior Debentures and Subordinated Seller Paper, to (ii) Consolidated EBITDA for the four consecutive fiscal quarters of Holdings ended on, or most recently preceding, such day.

“License” means any Patent License, Trademark License, Copyright License Software License or other license or sub-license of rights in intellectual property.

“Lien” means, with respect to any asset, any mortgage, pledge, hypothecation, assignment, deposit arrangement, lien (statutory or other) or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable Laws of any jurisdiction). Solely for the avoidance of doubt, neither the filing of a Uniform Commercial Code financing statement that is a protective lease filing in respect of an operating lease that does not constitute a security interest in the leased property or otherwise give rise to a Lien nor the filing of a Uniform Commercial Code financing statement in respect of consigned goods that does not constitute a security interest in the consigned goods or otherwise give rise to a Lien shall constitute a Lien solely on account of being filed in a public office.

“Limited Recourse Debt” means with respect to any Persons, Debt to the extent: (i) such Person (A) provides no credit support of any kind (including any undertaking, agreement or instrument that would constitute Debt), (B) is not directly or indirectly liable as a guarantor or otherwise or (C) does not constitute the lender; and (ii) no default with respect thereto would permit upon notice, lapse of time or both any holder of any other Debt (other than the Loans or the Notes) of such Person to declare a default on such other Debt or cause the payment thereof to be accelerated or payable prior to its stated maturity.

“Loan” means a Revolving Loan, a Term B Loan or a Swingline Loan (or a portion of any Revolving Loans, Term B Loan or Swingline Loans), individually or collectively as appropriate; provided that, if any such loan or loans (or portions thereof) are combined or subdivided pursuant to a Notice of Extension/Conversion, the term “Loan” shall refer to the combined principal amount resulting

from such combination or to each of the separate principal amounts resulting from such subdivision, as the case may be.

“London Interbank Offered Rate” means, for any Eurodollar Loan for the Interest Period applicable thereto:

(i) the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate that appears on the page of the Telerate screen (or any successor thereto) that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) for a period of time comparable to such Interest Period, determined as of approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period; or

(ii) if the rate referred to in clause (i) above does not appear on such Telerate page or service on such page or service shall cease to be available, the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate or such other page or service that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) for a period of time comparable to such Interest Period, determined as of approximately 11:00 A.M. two Business Days prior to the first day of such Interest Period; or

(iii) if the rates referenced in the preceding clauses (i) and (ii) are not available, the rate per annum determined by the Administrative Agent as the rate of interest (rounded upwards to the next 1/16th of 1%) at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted by Merrill Lynch Capital and with a term equivalent to such Interest Period as would be offered by Merrill Lynch Capital’s London branch to major banks in the offshore Dollar market at their request at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period.

“Management Agreement” means the Management Service Agreement dated as of the Closing Date, between CHS Management IV, L.P. and The Hillman Group, Inc. as the same may be amended, supplemented or modified from time to time in accordance with the terms thereof and of this Agreement

“Management Group” means the Persons identified on Schedule 1.01D.

“Management Put Rights” means the rights of certain members of management of Holdings or its Subsidiaries to put Equity Interests of Holdings and Intermediate Holdings to Holdings pursuant to the Executive Securities Agreements dated as of the date of this Agreement, between HCI Acquisition Corp. and each such member of management.

“Margin Stock” means “margin stock” as such term is defined in Regulation U.

“Material Adverse Effect” means (i) any material adverse effect upon the business, operations, assets, condition (financial or otherwise) liabilities (contingent or otherwise) or prospects of Holdings and its Consolidated Subsidiaries, taken as a whole, (ii) a material adverse effect on the ability of a Credit Party to consummate the transactions contemplated hereby to occur on the Effective Date or (iii) a material impairment of the rights and remedies of the Lenders in the aggregate under any Senior Finance Document.

“Maturity Date” means (i) as to Revolving Loans and Swingline Loans, the Revolving Termination Date and (ii) as to Term B Loans, the Term B Maturity Date.

“Merger” means the merger of HCI Acquisition Corp. with and into Holdings pursuant to, and in accordance with the terms of, the Acquisition Documents, with Holdings as the surviving entity of said merger.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

“Mortgage” means (i) in the case of owned real property interests, a mortgage or deed of trust, substantially in the form of, or otherwise substantially identical in substance to the provisions of, Exhibit F-4 hereto, among any Credit Party, the Collateral Agent and one or more trustees, as the same may be amended, modified or supplemented from time to time, or (ii) in the case of a Leasehold, a leasehold mortgage or leasehold deed of trust, substantially in the form of, or otherwise substantially identical in substance to the provisions of, Exhibit F-4 hereto, among any Credit Party, the Collateral Agent and one or more trustees, as the same may be amended, modified or supplemented from time to time.

“Mortgage Policies” has the meaning set forth in Section 4.01(k) hereto.

“Mortgaged Properties” means the real property interests of Holdings and its Subsidiaries described in Schedule 4.01(k) hereto.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA.

“Net Cash Proceeds” means:

(i) with respect to any Asset Disposition, (other than an Asset Disposition consisting of a lease where one or more Group Companies is acting as lessor, entered into in the ordinary course of business), Casualty or Condemnation, (A) the gross amount of all cash proceeds (including Insurance Proceeds and Condemnation Awards in the case of any Casualty or Condemnation, except to the extent and for so long as such Insurance Proceeds or Condemnation Awards constitute Reinvestment Funds or unless such Insurance Proceeds or Condemnation Awards are to be used for repair, restoration or replacement pursuant to plans approved by the Required Lenders) actually paid to or actually received by any Group Company in respect of such Asset Disposition, Casualty or Condemnation (including any cash proceeds received as income or other proceeds of any noncash proceeds of any Asset Disposition, Casualty or Condemnation as and when received), less (B) the sum of (w) the amount, if any, of all taxes (other than income taxes) and all income taxes (as estimated in good faith by the applicable financial or accounting officer of Holdings giving effect to the overall tax position of Holdings and its Subsidiaries), and customary fees, brokerage fees, commissions, costs and other expenses (other than those payable to any Group Company or to Affiliates of any Group Company other than pursuant to the Management Agreement as in effect on the Closing Date) that are incurred in connection with such Asset Disposition, Casualty or Condemnation and are payable by any Group Company, but only to the extent not already deducted in arriving at the amount referred to in clause (i)(A) above, (x) all appropriate amounts that must be set aside as a reserve in accordance with GAAP against any liabilities associated with such Asset Disposition, Casualty or Condemnation, (y) if applicable, the amount of any Debt secured by a Permitted Lien that has been repaid or

refinanced in accordance with its terms with the proceeds of such Asset Disposition, Casualty or Condemnation; and (z) any payments to be made by any Group Company as agreed between such Group Company and the purchaser of any assets subject to an Asset Disposition, Casualty or Condemnation in connection therewith; and

(ii) with respect to any Equity Issuance or Debt Issuance, the gross amount of cash proceeds paid to or received by any Group Company in respect of such Equity Issuance or Debt Issuance as the case may be (including cash proceeds subsequently as and when received at any time in respect of such Equity Issuance or Debt Issuance from non-cash consideration initially received or otherwise), net of underwriting discounts and commissions or placement fees, investment banking fees, legal fees, consulting fees, accounting fees and other customary fees and expenses incurred by any Group Company in connection therewith (other than those payable to any Group Company or to any Affiliate of any Group Company) other than pursuant to the Management Agreement as in effect on the Closing Date.

“Non-Renewal Notice Date” has the meaning set forth in Section 2.05(c).

“Note” means a Revolving Note, a Term B Note or a Swingline Note, and “Notes” means any combination of the foregoing.

“Notice of Borrowing” means a request by the Borrower for a Borrowing, substantially in the form of Exhibit A-1 hereto.

“Notice of Extension/Conversion” has the meaning set forth in Section 2.07(a).

“Operating Lease” means, as applied to any Person, a lease (including leases which may be terminated by the lessee at any time) of any property (whether real, personal or mixed) by such Person as lessee which is not a Capital Lease.

“Other Taxes” has the meaning set forth in Section 3.01(b).

“OTPP” means the Ontario Teachers’ Pension Plan Board.

“OTPP Side Letters” means, collectively, (i) that certain side letter dated as of the Closing Date and among Code Hennessy & Simmons IV LP (“CHS”), Holdings, the Borrower and Teabar Capital Corporation, and (ii) that certain side letter dated as of the Closing Date hereof by and among CHS, the Borrower and OTPP.

“Owned Mortgaged Property” and “Owned Mortgaged Properties” have the respective meanings set forth in Section 4.01(k).

“Participation Interest” means a Credit Extension by a Lender by way of a purchase of a participation interest in an LC Support Agreement or LC Obligations as provided in Section 2.05(e), in Swingline Loans as provided in Section 2.01(e)(vi) or in any Loans as provided in Section 2.13.

“Patent” means any of the following: (i) all letters patent and design letters patent of the United States or any other country; (ii) all applications filed or in preparation for filing for letters patent and design letters patent of the United States or any other country including, without limitation, applications in the United States Patent and Trademark Office or in any similar office or agency of the United States or any other country or political subdivision thereof; (iii) all reissues, divisions, continuations, continuations-in-part, revisions, renewals or extensions thereof; (iv) all claims for, and

rights to sue for, past, present or future infringement of any of the foregoing; (v) all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing, including, without limitation, damages and payments for past, present or future infringements thereof and payments and damages under all Patent Licenses in connection therewith; and (vi) all rights corresponding to any of the foregoing whether arising under the laws of the United States or any foreign country or otherwise.

“Patent License” means any agreement now or hereafter in existence granting to any Credit Party any right, whether exclusive or non-exclusive, with respect to any Person’s patent or any invention now or hereafter in existence, whether or not patentable, or pursuant to which any Credit Party has granted to any other Person, any right, whether exclusive or non-exclusive, with respect to any Patent or any invention now or hereafter in existence, whether or not patentable and whether or not a Patent or application for Patent is in or hereafter comes into existence on such invention.

“PBGC” means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any entity succeeding to any or all of its functions under ERISA.

“Perfection Certificate” means with respect to any Credit Party a certificate, substantially in the form of Exhibit F-3 to this Agreement, completed and supplemented with the schedules and attachments contemplated thereby and duly executed by a Responsible Officer of such Credit Party.

“Permit” means any license, permit, franchise, right or privilege, certificate of authority or order, or any waiver of the foregoing, issued or issuable by any Governmental Authority.

“Permitted Business Acquisition” means a Business Acquisition; provided that:

(i) the Equity Interests or property or assets acquired in such acquisition relate to a line of business similar to the business of the Borrower or any of its Subsidiaries engaged in on the Closing Date or reasonably related or ancillary or complimentary thereto;

(ii) the representations and warranties made by the Credit Parties in each Senior Finance Document shall be true and correct in all material respects at and as of the date of such acquisition (as if made on such date after giving effect to such acquisition), except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects at and as of such earlier date);

(iii) the Administrative Agent or the Collateral Agent, as applicable, shall have received all items in respect of the Equity Interests or property or assets acquired in such acquisition (and/or the seller thereof) required to be delivered by Section 6.10;

(iv) in the case of an acquisition of the Equity Interests of another Person, (A) except in the case of the incorporation of a new Subsidiary, the board of directors (or other comparable governing body) of such other Person shall have duly approved such acquisition and (B) the Equity Interests so acquired shall constitute 100% of the total Equity Interests of the issuer thereof (it being understood that, subject to the limitations set forth in Section 7.06(a)(x) and other provisions of this Agreement, the foregoing restriction shall not prohibit the acquisition of a Person which itself has non-Wholly-Owned Subsidiaries);

(v) no Default or Event of Default shall have occurred and be continuing immediately before or immediately after giving effect to such acquisition, and Holdings shall have delivered to the Administrative Agent a Pro-Forma Compliance Certificate demonstrating

that, upon giving effect to such acquisition on a Pro-Forma Basis (with pro-forma adjustments reasonably satisfactory to the Lead Arrangers), (A) Holdings shall be in compliance with all of the financial covenants set forth in Section 7.17 hereof as of the last day of the most recent period of four consecutive fiscal quarters of Holdings which precedes or ends on the date of such acquisition and with respect to which the Administrative Agent has received the consolidated financial information required under Section 6.01(a) and (b) and the certificate required by Section 6.01(c) and (B) the Leverage Ratio as of the last day of such period shall not be greater than the ratio set forth below opposite the period during which such period ends:

Fiscal Quarters Ended During	Ratio
Effective Date through 9/30/06	4.25 to 1.0
10/01/06 through 6/30/07	4.00 to 1.0
7/01/07 through 6/30/08	3.75 to 1.0
7/01/08 through 9/30/08	3.50 to 1.0
10/01/08 through 12/31/08	3.25 to 1.0
1/01/09 through 12/31/09	3.00 to 1.0
1/01/10 through 12/31/10	2.50 to 1.0
1/01/11 through 3/31/11	2.25 to 1.0

(vi) after giving effect to such acquisition, the Revolving Committed Amount shall be at least \$15,000,000 greater than the aggregate Revolving Outstandings; and

(vii) the aggregate consideration (including cash, earn-out payments (to the extent required to be reserved for under GAAP), assumption and/or incurrence of Debt and non-cash consideration for all such acquisitions occurring after the Closing Date shall not exceed \$60,000,000; provided that (A) the aggregate amount of Debt incurred and assumed in connection with all such acquisitions shall not exceed \$40,000,000 plus \$10,000,000 permitted to be incurred under Section 7.01(xvii), and (B) any incurrence of Debt in connection with such acquisitions shall be permitted under Section 7.01(xi) or (xvii) and any assumption of Debt in connection with such acquisitions shall be permitted under Section 7.01(iv).

“Permitted Encumbrances” means (i) those liens, encumbrances and other matters affecting title to any Mortgaged Property listed in the Mortgage Policies in respect thereof and found, on the date of delivery of such Mortgage Policies to the Collateral Agent in accordance with the terms hereof, reasonably acceptable by the Collateral Agent, (ii) zoning, building codes, land use and other similar laws and municipal ordinances which are not violated in any material respect by the existing improvements and the present use by the mortgagor of the Premises (as defined in the respective Mortgage), (iii) such other items to which the Collateral Agent may consent (such consent not to be unreasonably withheld) and (iv) encumbrances, right of way and other matters affecting title to any Mortgaged Property that would not have a Material Adverse Effect.

“Permitted Joint Venture” means a joint venture, in the form of a corporation, limited liability company, business trust, joint venture, association, company or partnership, entered into by the Borrower or any of its Subsidiaries which (i) is engaged in a line of business related, ancillary or complementary to those engaged in by the Borrower and its Subsidiaries and (ii) is formed or organized in a manner that limits the exposure of the Borrower and its Subsidiaries for the liabilities thereof to (A) the Investments of the Borrower and its Subsidiaries therein permitted under Section 7.06(a)(xvii) and (B) any Debt of any Permitted Joint Venture or any Guaranty Obligations by the Borrower or any of its Subsidiaries in respect of such Debt, which Debt or Guaranty Obligations are permitted at the time under Section 7.01.

“Permitted Liens” has the meaning set forth in Section 7.02.

“Person” means an individual, a corporation, a partnership, an association, a limited liability company, a trust or an unincorporated association or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Plan” means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code maintained or formerly maintained by or contributed or formerly contributed to by any Group Company or any ERISA Affiliate, including a Multiemployer Plan.

“Pledge Agreement” means the Pledge Agreement dated as of the Closing Date among Holdings, Intermediate Holdings, the Borrower, the Subsidiary Guarantors and the Collateral Agent, as amended, supplemented or modified from time to time.

“Pledged Collateral” means the “Collateral” as defined in the Pledge Agreement.

“Pre-Commitment Information” means, taken as an entirety, (i) information with respect to Holdings and its Subsidiaries contained in the Confidential Information Memorandum dated November 2003 Holdings or the Acquisition provided to any Agent or Lender by or on behalf of Holdings prior to the Closing Date.

“Preferred Stock” means, as applied to the Equity Interests of a Person, Equity Interests of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over the Equity Interests of any other class of such Person.

“Prepayment Account” has the meaning set forth in Section 2.09(b)(x).

“Prime Rate” means for any day the rate of interest announced by Merrill Lynch Capital in New York City (or such other principal office of the Administrative Agent as communicated in writing to the Borrower and the Lenders) from time to time as its Prime Rate for Dollars loaned in the United States. It is a rate set by Merrill Lynch Capital based upon a variety of factors, including Merrill Lynch Capital’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate. Any change in the interest rate resulting from a change in the Prime Rate shall take effect at the opening of business on the day specified in the announcement of such change.

“Principal Amortization Payment” means a scheduled principal payment on the Term B Loan pursuant to Section 2.08(b).

“Principal Amortization Payment Date” means (i) the last Business Day of each calendar quarter, commencing with the first such date occurring at least three months after the Closing Date and ending on the Term B Maturity Date and (ii) the Term B Maturity Date.

“Pro-Forma Basis” means, for purposes of calculating compliance of any transaction with any provision hereof, that the transaction in question shall be deemed to have occurred as of the first day of the most recent period of four consecutive fiscal quarters of Holdings which precedes or ends on the date of such transaction and with respect to which the Administrative Agent has received the financial information for Holdings and its Consolidated Subsidiaries required under Section 6.01(a) and (b), as applicable, and the certificate required by Section 6.01(c) for such period. As used in this definition,

“transaction” means (i) any incurrence or assumption by a Group Company of Attributable Debt in respect of a Sale/Leaseback Transaction under Section 7.13, (ii) any Permitted Business Acquisition referred to in Section 7.06(a)(xiii) or in clause (v) of the definition of “Permitted Business Acquisition” set forth in Section 1.01, (iii) any Asset Disposition referred to in Section 7.05(xiv), or (iv) any computation of Consolidated EBITDA under the circumstances contemplated by the second sentence of the definition thereof, or (v) Equity Issuances requiring prepayment under Section 2.09(b)(v), and any related repayment of Debt. In connection with any calculation of the financial covenants set forth in Section 7.17 upon giving effect to a transaction on a “Pro-Forma Basis”, (i) any Debt incurred or any Equity Interests issued, and any related repayment of Debt, by Holdings or any of its Subsidiaries in connection with such transaction (or any other transaction which occurred during the relevant four fiscal quarter period) shall be deemed to have been incurred as of the first day of the relevant four fiscal-quarter period, (ii) if such Debt has a floating or formula rate, then the rate of interest for such Debt for the applicable period for purposes of the calculations contemplated by this definition shall be determined by utilizing the rate which is or would be in effect with respect to such Debt as at the relevant date of such calculations, (iii) income statement items (whether positive or negative) attributable to all property acquired in such transaction or to the Investment comprising such transaction, as applicable, shall be included as if such transaction has occurred as of the first day of the relevant four-fiscal-quarter period, (iv) such other pro forma adjustments which would be permitted or required by Regulation S-X or S-K under the Securities Act shall be taken into account, and (v) such other adjustments as may be reasonably agreed between the Borrower and the Administrative Agent shall be taken into account.

“Pro-Forma Compliance Certificate” means a certificate of the chief financial officer or chief accounting officer of Holdings delivered to the Administrative Agent in connection with any “transaction” as defined in the definition of “Pro-Forma Basis” above and containing reasonably detailed calculations, upon giving effect to the applicable transaction on a Pro-Forma Basis, of the Interest Coverage Ratio and the Leverage Ratio as of the last day of the most recent period of four consecutive fiscal quarters of Holdings which precedes or ends on the date of the applicable transaction and with respect to which the Administrative Agent shall have received the consolidated financial information for Holdings and its Consolidated Subsidiaries required under Section 6.01(a) or (b), as applicable, and the certificate required by Section 6.01(c) for such period.

“Purchase Money Debt” means Debt of Holdings or any of its Subsidiaries incurred for the purpose of financing all or any part of the purchase price or cost of construction or improvement of property used in the business of Holdings or such Subsidiary; provided that such Debt is incurred within 120 days after such property is acquired or, in the case of improvements, constructed.

“Qualifying Equity Issuance” means (i) any Equity Issuance by Holdings or Intermediate Holdings to, or any receipt by Holdings or Intermediate Holdings of a capital contribution from, the Investor Group and any other Person holding Equity Interests, directly or indirectly, of Holdings or Intermediate Holdings on the Closing Date and any subsequent holders of preemptive rights in respect of Equity Interests of Holdings or Intermediate Holdings, the Net Cash Proceeds of which are contributed immediately, directly or indirectly, to the common equity of the Borrower, (ii) grants of stock of Holdings or Preferred Stock of Intermediate Holdings, or options to acquire stock of Holdings or Preferred Stock of Intermediate Holdings, to the management of Holdings and its Subsidiaries, and (iii) the issuance by Holdings or Intermediate Holdings for cash of its common Equity Interests to the Sponsor Group or any other Person if: (A) 100% of the proceeds of such issuance shall be immediately contributed, directly or indirectly, by Holdings or Intermediate Holdings (as the case may be) to the Borrower; (B) after giving effect thereto, no Change of Control shall have occurred; (C) such stock shall be issued in a private placement exempt from registration under the Securities Act; (D) the proceeds thereof shall be used (without duplication) only (w) to make Consolidated Capital Expenditures, (x) to make Permitted Business Acquisitions pursuant to Section 7.06(a)(xiii), Investments in Permitted Joint Ventures pursuant

to Section 7.06(a)(xvii) and other Investments pursuant to Section 7.06(a)(xxi), (y) to repay Debt of the Borrower and its Subsidiaries or (z) to make Restricted Payments pursuant to Section 7.07(viii), and in any event the proceeds thereof shall not be used to repay any Subordinated Debt or to make any Restricted Payment other than Restricted Payments expressly permitted pursuant to Section 7.07(viii); (E) within five Business Days after such issuance, Holdings or Intermediate Holdings (as the case may be) shall have delivered to the Administrative Agent a certificate of the chief financial officer or chief accounting officer of Holdings (in each case) attesting to the satisfaction of the foregoing conditions, describing the uses of the proceeds of such issuance and attesting that such use shall not constitute a Default or an Event of Default; and (F) such proceeds shall be used within 30 days after such issuance as described in such certificate.

“Real Property” means, with respect to any Person, all of the right, title and interest of such Person in and to land, improvements and fixtures, including Leaseholds.

“Recorded Leasehold Interest” means a Leased Mortgaged Property with respect to which a Recorded Document has been recorded in all places necessary or desirable, in the reasonable judgment of the Lead Arrangers, to give constructive notice of such Leased Mortgaged Property to third-party purchasers and encumbrancers of the affected real property. For purposes of this definition, the term “Recorded Document” means, with respect to any Leased Mortgaged Property, (i) the lease evidencing such Leased Mortgaged Property or a memorandum thereof, executed and acknowledged by the owner of the affected real property, as lessor, or (ii) if such Leased Mortgaged Property was acquired or subleased from the holder of a Recorded Leasehold Interest, the applicable assignment or sublease document, executed and acknowledged by such holder, in each case in form and sufficient to give such constructive notice upon recordation and otherwise in form reasonably satisfactory to the Lead Arrangers.

“Refinanced Agreements” means those instruments, documents and agreements listed on Schedule 1.01C.

“Refunded Swingline Loan” has the meaning set forth in Section 2.01(c).

“Register” has the meaning set forth in Section 10.06(d).

“Regulation D, T, U or X” means Regulation D, T, U or X, respectively, of the Board of Governors of the Federal Reserve System as amended, or any successor regulation.

“Regulation S-X” means Regulation S-X under the Securities Act, as amended, or any successor regulation.

“Reinvestment Funds” means, with respect to any Insurance Proceeds or any Condemnation Award, that portion of such funds as shall, according to a certificate of a Responsible Officer of Holdings delivered to the Administrative Agent within 30 days after an executive officer of Holdings becoming aware of the occurrence of the Casualty or Condemnation giving rise thereto, be reinvested or contractually committed to be reinvested within one year after the date of receipt of such Insurance Proceeds or Condemnation Award in the repair, restoration or replacement of the properties that were the subject of such Casualty or Condemnation or in other tangible assets of a like nature used or useful in the ordinary course of business of the Borrower and its Subsidiaries; provided that (i) the aggregate amount of such proceeds with respect to any such event or series of related events shall not exceed \$15,000,000 without the prior written consent of the Required Lenders, (ii) such certificate shall be accompanied by evidence reasonably satisfactory to the Administrative Agent that any property subject to such Casualty or Condemnation has been or will be repaired, restored or replaced to, or better than, its condition immediately prior to such Casualty or Condemnation, or that such Insurance Proceeds

or Condemnation Awards have otherwise been reinvested in tangible assets of a like nature used or useful in the ordinary course of business of Holdings and its Subsidiaries, (iii) at the request of the Collateral Agent or the Administrative Agent, pending such reinvestment in the case of Insurance Proceeds or Condemnation Awards in excess of \$5,000,000, the entire amount of such proceeds shall be deposited in an account with respect to which an Account Control Agreement (as defined in the Security Agreement) is in full force and effect, and (iv) from and after the date of delivery of such certificate, Holdings or one or more of its Subsidiaries shall diligently proceed, in a commercially reasonable manner, to complete the repair, restoration or replacement of the properties that were the subject of such Casualty or Condemnation or otherwise reinvest such Insurance Proceeds or Condemnation Awards as described in such certificate; and provided, further, that, if any of the foregoing conditions shall cease to be satisfied at any time, such funds shall no longer be deemed Reinvestment Funds and such funds shall immediately be applied to prepayment of the Loans in accordance with Section 2.09(b); and provided, further, that any funds not so reinvested within such one year period shall immediately be applied to the payment of the Loans in accordance with Section 2.09(b).

“Replacement Date” has the meaning set forth in Section 2.10(d).

“Required Lenders” means Lenders whose aggregate Credit Exposure (as hereinafter defined) constitutes more than 50% of the Credit Exposure of all Lenders at such time; provided, however, that if any Lender shall be a Defaulting Lender at such time then there shall be excluded from the determination of Required Lenders such Lender and the aggregate principal amount of Credit Exposure of such Lender at such time. For purposes of the preceding sentence, the term “Credit Exposure” as applied to each Lender shall mean (i) at any time prior to the termination of the Commitments, the sum of (A) the Revolving Commitment Percentage of such Lender multiplied by the Revolving Committed Amount plus (B) the Term B Commitment Percentage of such Lender multiplied by the aggregate principal amount of the Term B Loans outstanding at such time, and (ii) at any time after the termination of the Commitments, the sum of (A) the aggregate amount of the outstanding Loans of such Lender plus (B) such Lender’s Participation Interests in all LC Obligations and Swingline Loans.

“Reset Date” has the meaning set forth in Section 1.05.

“Required Revolving Lenders” means Lenders whose aggregate Revolving Credit Exposure (as hereinafter defined) constitutes more than 50% of the Revolving Credit Exposure of all Lenders at such time; provided, however, that if any Lender shall be a Defaulting Lender at such time then there shall be excluded from the determination of Required Revolving Lenders such Lender and the aggregate principal amount of Revolving Credit Exposure of such Lender at such time. For purposes of the preceding sentence, the term “Revolving Credit Exposure” as applied to each Lender shall mean (i) at any time prior to the termination of the Revolving Commitments, the Revolving Commitment Percentage of such Lender multiplied by the Revolving Committed Amount, and (ii) at any time after the termination of the Revolving Commitments, the sum of (A) the principal balance of the outstanding Revolving Loans of such Lender plus (B) such Lender’s Participation Interests in all LC Obligations.

“Responsible Officer” means the chief executive officer, president, senior vice president, vice president, chief financial officer, treasurer or assistant treasurer, secretary or assistant secretary of a Credit Party. Any document delivered hereunder that is signed by a Responsible Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Credit Party.

“Restricted Payment” means (i) any dividend or other distribution, direct or indirect, on account of any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter

outstanding, (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter outstanding and (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter outstanding.

“Revolving Borrowing” means a Borrowing comprised of Revolving Loans and identified as such in the Notice of Borrowing with respect thereto.

“Revolving Commitment” means, with respect to any Lender, the commitment of such Lender, in an aggregate principal amount at any time outstanding of up to such Lender’s Revolving Commitment Percentage of the Revolving Committed Amount, (i) to make Revolving Loans in accordance with the provisions of Section 2.01(a), (ii) to purchase Participation Interests in Swingline Loans in accordance with the provisions of Section 2.01(c) and (iii) to purchase Participation Interests in Letters of Credit in accordance with the provisions of Section 2.05(e).

“Revolving Commitment Percentage” means, for each Lender, the percentage identified as its Revolving Commitment Percentage on Schedule 1.01A hereto, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 10.06(b).

“Revolving Committed Amount” means \$40,000,000 or such lesser amount to which the Revolving Committed Amount may be reduced pursuant to Section 2.10.

“Revolving Credit Exposure” has the meaning set forth in the definition of “Required Revolving Lenders” contained in this Section 1.01.

“Revolving Lender” means each Lender identified in Schedule 1.01A as having a Revolving Commitment and each Eligible Assignee which acquires a Revolving Commitment or Revolving Loan pursuant to Section 10.06(b) and their respective successors.

“Revolving Loan” means a Loan made under Section 2.01(a).

“Revolving Note” means a promissory note, substantially in the form of Exhibit B-1 hereto, evidencing the obligation of the Borrower to repay outstanding Revolving Loans, as such note may be amended, supplemented, extended, renewed or replaced from time to time.

“Revolving Outstandings” means at any date the aggregate outstanding principal amount of all Revolving Loans and Swingline Loans plus the aggregate outstanding amount of all LC Obligations.

“Revolving Termination Date” means the sixth anniversary of the Closing Date (or, if such day is not a Business Day, the next preceding Business Day) or such earlier date upon which the Revolving Commitments shall have been terminated in their entirety in accordance with this Agreement.

“S&P” means Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc., a New York corporation, and its successor or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

“Sale/Leaseback Transaction” means any direct or indirect arrangement with any Person or to which any such Person is a party providing for the leasing to Holdings or any of its Subsidiaries of any property, whether owned by Holdings or any of its Subsidiaries as of the Effective Date or later

acquired, which has been or is to be sold or transferred by Holdings or any of its Subsidiaries to such Person or to any other Person from whom funds have been, or are to be, advanced by such Person on the security of such property.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Security Agreement” means the Security Agreement dated as of the Closing Date among Holdings, Intermediate Holdings, the Borrower, the Subsidiary Guarantors and the Collateral Agent, as amended, modified or supplemented from time to time.

“Sellers” means the Optionholders and Stockholders, each as defined under the Acquisition Agreement.

“Senior Finance Documents” means the Existing Credit Agreement, this Agreement, the Notes, the Guaranty, the Collateral Documents, each Perfection Certificate, the Intercompany Notes, each Accession Agreement and each LC Document, collectively, and all other related agreements and documents issued or delivered hereunder or thereunder or pursuant hereto or thereto, in each case as the same may be amended, modified or supplemented from time to time.

“Senior Leverage Ratio” means on any day the ratio of (i) Consolidated Funded Debt as of such date, less the aggregate amount outstanding under the Subordinated Debentures, the Junior Debentures and Subordinated Seller Paper as of such date, to (ii) Consolidated EBITDA for the four consecutive fiscal quarters of Holdings ended on, or most recently preceding, such date.

“Senior Obligations” means with respect to each Credit Party, without duplication:

(i) in the case of Borrower, all principal of and interest (including, without limitation, any interest which accrues after the commencement of any bankruptcy or insolvency proceeding with respect to the Borrower, whether or not allowed or allowable as a claim under any bankruptcy or insolvency proceeding) on any Loan made or LC Obligation issued under, or any Note issued pursuant to, this Agreement or any other Senior Finance Document;

(ii) all fees, expenses, indemnification obligations, foreign currency exchange obligations and other amounts of whatever nature now or hereafter payable by such Credit Party (including, without limitation, any amounts which accrue after the commencement of any bankruptcy or insolvency proceeding with respect to such Credit Party, whether or not allowed or allowable as a claim under any bankruptcy or insolvency proceeding) pursuant to this Agreement or any other Senior Finance Document;

(iii) all expenses of the Agents as to which one or more of the Agents have a right to reimbursement by such Credit Party under Section 10.04 of this Agreement or under any other similar provision of any other Senior Finance Document, including, without limitation, any and all sums advanced by the Collateral Agent to preserve the Collateral or preserve its security interests in the Collateral to the extent permitted hereunder or under any Senior Finance Document;

(iv) all amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement by such Credit Party under Section 10.05 of this Agreement or under any other similar provision of any other Senior Finance Document; and

(v) in the case of each Subsidiary Guarantor, all amounts now or hereafter payable by such Subsidiary Guarantor and all other obligations or liabilities now existing or hereafter arising or incurred (including, without limitation, any amounts which accrue after the commencement of any bankruptcy or insolvency proceeding with respect to the Borrower, Holdings or such Subsidiary Guarantor, whether or not allowed or allowable as a claim under any bankruptcy or insolvency proceeding) on the part of such Subsidiary Guarantor pursuant to this Agreement, the Guaranty or any other Senior Finance Document;

together in each case with all renewals, modifications, consolidations or extensions thereof.

“Software” means all “software” (as defined in the UCC), and also means and includes all software programs, whether now or hereafter owned, licensed or leased by a Credit Party, designed for use on Computer Hardware, including, without limitation, all operating system software, utilities and application programs in whatever form and whether or not embedded in goods, all source code and object code in magnetic tape, disk or hard copy format or any other listings whatsoever, all firmware associated with any of the foregoing all documentation, flowcharts, logic diagrams, manuals, specifications, training materials, charts and pseudo codes associated with any of the foregoing, and all options, warranties, services contracts, program services, test rights, maintenance rights, support rights, renewal rights and indemnifications relating to any of the foregoing.

“Software License” means any agreement (including any agreement constituting a Copyright License, Patent License and/or Trademark License) now or hereafter in existence granting to any Credit Party any right, whether exclusive or non-exclusive, to use another Person’s Software, or pursuant to which any Credit Party has granted to any other Person, any right, whether exclusive or non-exclusive, to use any Software, whether or not subject to any registration.

“Solvent” means, with respect to any Person as of a particular date, that on such date (i) such Person is able generally to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (ii) such Person does not intend to, and does not believe that it will, incur debts beyond such Person’s ability to pay as such debts mature, (iii) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (iv) the fair value (determined in accordance with the United States Bankruptcy Code) of the assets of such Person is greater than the total amount of liabilities, including, without limitation, probable liabilities, of such Person and (v) the present fair value (i.e., the amount that may be realized within a commercially reasonable time either through collection or sale at the regular market value, conceiving the latter as the amount that could be obtained for the assets in question within such period by a capable and diligent businessman from a buyer who is willing to purchase under ordinary selling conditions) of the assets of such Person will exceed the amount that will be required to pay the probable liability on such Person’s existing debts as they become absolute and matured. For purposes of this definition, “debt” means any legal liability, whether matured, unmatured, liquidated or unliquidated, absolute, fixed or contingent, or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right is an equitable remedy, is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

“Sponsor” means Code Hennessy & Simmons LLC and Code Hennessy & Simmons IV, LP, collectively, and their respective successors.

“Sponsor Group” means the Sponsor and any of its Subsidiaries or Affiliates.

“Standby Letter of Credit” has the meaning set forth in Section 2.05(b).

“Stockholder Agreements” means the Holdings Stockholder Agreement and the Intermediate Holdings Stockholder Agreement.

“Subordinated Debentures” means the subordinated debentures issued by the Borrower in favor of Allied Capital Corporation (the “Subordinated Debentures Holder”) pursuant to the Subordinated Debentures Indenture, as such Subordinated Debentures may be amended, modified or supplemented from time to time in accordance with the limitations set forth herein.

“Subordinated Debentures Documents” means the Subordinated Debentures Indenture, in each case including all exhibits and schedules thereto, the Subordination Agreement and all other agreements, documents and instruments relating to the Subordinated Debentures, in each case as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of this Agreement.

“Subordinated Debentures Indenture” means the \$47,500,000 loan agreement dated as of the Closing Date between among others the Borrower and Allied Capital Corporation, as such Subordinated Debentures Indenture may be amended, modified or supplemented from time to time.

“Subordinated Debt” of any Person means (i) the Subordinated Debentures, (ii) the Junior Debentures, and (iii) all other Debt (A) the principal of which by its terms is not required to be repaid, in whole or in part, before the first anniversary of the later of the Revolving Termination Date and the Term B Maturity Date, (B) is contractually or structurally subordinated in right of payment to such Person’s indebtedness, obligations and liabilities to the Finance Parties under the Senior Finance Documents pursuant to payment and subordination provisions reasonably satisfactory in form and substance to the Lead Arrangers and (C) is issued pursuant to credit documents having covenants, subordination provisions and events of default that in no event are less favorable, including with respect to rights of acceleration, to such Person than the terms hereof or are otherwise reasonably satisfactory in form and substance to the Lead Arrangers.

“Subordinated Seller Paper” means unsecured Subordinated Debt of Holdings which (i) is issued to a seller of assets or a Person the subject of a Permitted Business Acquisition in a transaction permitted by this Agreement, (ii) by its terms does not require the payment of interest in cash or Cash Equivalents until a date on or after the first anniversary of the later of the Revolving Termination Date and the Term B Maturity Date, and (iii) is issued on terms, covenants and conditions satisfactory in all respects to the Lead Arrangers. For the avoidance of doubt Subordinated Seller Paper shall not include the Subordinated Debentures.

“Subordination Agreement” means the subordination and intercreditor agreement dated the Closing Date and made between the Credit Parties, the Administrative Agent and the Subordinated Debentures Holder, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of this Agreement.

“Subsidiary” means with respect to any Person any corporation, partnership, limited liability company, association or other business entity of which (i) if a corporation, more than 50% of the total voting power of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, limited liability company, association or business entity other than a corporation, more than 50% of the partnership or other similar ownership interests thereof is at the time owned or controlled,

directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have more than 50% ownership interest in a partnership, limited liability company, association or other business entity if such Person or Persons shall be allocated more than 50% of partnership, association or other business entity gains or losses or shall be or control the managing director, manager or a general partner of such partnership, association or other business entity.

“Subsidiary Guarantor” means each Subsidiary of Holdings existing on the Effective Date (other than a Foreign Subsidiary) and each Subsidiary of Holdings (other than a Foreign Subsidiary), except to the extent otherwise provided in Section 6.10(d), that becomes a party to the Guaranty after the Effective Date by execution of an Accession Agreement referring to the Guaranty or otherwise, and “Subsidiary Guarantors” means any two or more of them.

“Swingline Commitment” means the agreement of the Swingline Lender to make Loans pursuant to Section 2.01(c).

“Swingline Committed Amount” means \$5,000,000, as such Swingline Committed Amount may be reduced pursuant to Section 2.10.

“Swingline Lender” means Merrill Lynch Capital, in its capacity as the Swingline Lender under Section 2.01(c), and its successor or successors in such capacity.

“Swingline Loan” means a Base Rate Loan made by the Swingline Lender pursuant to Section 2.01(c), and “Swingline Loans” means any two or more of such Base Rate Loans.

“Swingline Loan Request” has the meaning set forth in Section 2.02(b).

“Swingline Note” means a promissory note, substantially in the form of Exhibit B-3 hereto, evidencing the obligation of the Borrower to repay outstanding Swingline Loans, as such note may be amended, modified, supplemented, extended, renewed or replaced from time to time.

“Swingline Termination Date” means the earlier of (i) the Revolving Termination Date and (ii) the date on which the Swingline Commitment is terminated in its entirety in accordance with this Agreement.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (i) a so-called synthetic, off-balance sheet or tax retention lease or (ii) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such person (without regard to accounting treatment).

“Target” means The Hillman Companies, Inc., a Delaware corporation (prior to the consummation of the Merger).

“Taxes” has the meaning set forth in Section 3.01.

“Term B Commitment” means, collectively, the Existing Term B Commitments and the Additional Term B Commitments.

“Term B Committed Amount” means \$235,000,000.

“Term B Commitment Percentage” means the Existing Term B Commitment Percentage and/or the Additional Term B Commitment Percentage, as the context may require.

“Term B Lender” means an Existing Term B Lender and/or an Incremental Term B Lender, as the context may require.

“Term B Loan” means an Existing Term B Loan and/or an Additional Term B Loan, as the context may require.

“Term B Maturity Date” means the seventh anniversary of the Closing Date (or if such day is not a Business Day, the next preceding Business Day).

“Term B Note” means a promissory note, substantially in the form of Exhibit B-2 hereto, evidencing the obligation of the Borrower to repay outstanding Term B Loans, as such note may be amended, modified or supplemented from time to time.

“Title Insurance Company” has the meaning set forth in Section 4.01(k).

“Trade Letter of Credit” has the meaning set forth in Section 2.05(b).

“Trademark” means any of the following: (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, certification marks, collective marks, brand names and trade dress which are or have been used in the United States or in any state, territory or possession thereof, or in any other place, nation or jurisdiction, along with all prints and labels on which any of the foregoing have appeared or appear, package and other designs, and any other source or business identifiers, and general intangibles of like nature, and the rights in any of the foregoing which arise under applicable law; (ii) the goodwill of the business symbolized thereby or associated with each of the foregoing; (iii) all registrations and applications in connection therewith, including, without limitation, registrations and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, (iv) all reissues, extensions and renewals thereof; (v) all claims for, and rights to sue for, past, present or future infringements of any of the foregoing; (vi) all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing, including, without limitation, damages and payments for past, present or future infringements thereof and payments and damages under all Trademark Licenses in connection therewith; and (vii) all rights corresponding to any of the foregoing whether arising under the laws of the United States or any foreign country or otherwise.

“Trademark License” means any agreement now or hereafter in existence granting to any Credit Party any right, whether exclusive or non-exclusive, to use another Person’s trademarks or trademark applications, or pursuant to which any Credit Party has granted to any other Person, any right, whether exclusive or non-exclusive, to use any Trademark, whether or not registered, and the rights to prepare for sale, sell and advertise for sale, all of the inventory now or hereafter owned by any Credit Party and now or hereafter covered by such license agreements.

“Transaction” means the events contemplated by the Transaction Documents to occur on the Closing Date or the Effective Date, as the case may be.

“Transaction Documents” means the Acquisition Documents, the Capitalization Documents, the Subordinated Debenture Documents, and the Senior Finance Documents, collectively, and “Transaction Document” means any one of them.

“Trust Common Securities” means the 11.6% trust common securities of The Hillman Group Capital Trust held by The Hillman Companies, Inc.

“Trust Preferred Securities” means the 11.6% trust preferred securities issued by Hillman Group Capital Trust pursuant to an amended and restated declaration of trust dated September 5, 1997 as amended, revised or modified.

“Type” has the meaning set forth in Section 1.04.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York provided that if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection or the priority of the security interests of the Collateral Agent in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“Unfunded Liabilities” means with respect to each Plan, the amount (if any) by which the present value of all nonforfeitable benefits under each Plan exceeds the current value of such Plan’s assets allocable to such benefits, all determined in accordance with the respective most recent valuations for such Plan using applicable PBGC plan termination actuarial assumptions (the terms “present value” and “current value” shall have the same meanings specified in Section 3 of ERISA).

“United States” means the United States of America, including each of the States and the District of Columbia, but excluding its territories and possessions.

“Unused Revolving Commitment Amount” means, for any period, the amount by which (i) the then applicable aggregate Revolving Committed Amount of all non-Defaulting Lenders exceeds (ii) the daily average sum for such period of (A) the aggregate amount of all outstanding Revolving Loans plus (B) the aggregate amount of all outstanding LC Obligations.

“U.S. Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as the same may be amended, supplemented, modified, replaced or otherwise in effect from time to time.

“Welfare Plan” means a “welfare plan” as such term is defined in Section 3(1) of ERISA.

“Wholly-Owned Subsidiary” means, with respect to any Person at any date, any Subsidiary of such Person all of the shares of capital stock or other ownership interests of which (except directors’ qualifying shares are at the time directly or indirectly owned by such Person and for the purposes of this Agreement, Intermediate Holdings and the Borrower shall be deemed to be wholly-owned Subsidiaries of Holdings, notwithstanding the Investor Preferred Equity Issuance.)

Section 1.02 Computation of Time Periods and Other Definitional Provisions. For purposes of computation of periods of time hereunder, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”. All references to time herein shall be references to Eastern Standard time or Eastern Daylight time, as the case may be, unless specified otherwise. References in this Agreement to Articles, Sections, Schedules, Appendices or Exhibits shall be to Articles, Sections, Schedules, Appendices or Exhibits of or to this Agreement unless otherwise specifically provided. The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined.

Section 1.03 Accounting Terms and Determinations. Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lenders hereunder shall be prepared, in accordance with GAAP applied on a consistent basis. All financial statements delivered to the Lenders hereunder shall be accompanied by a statement from Holdings that GAAP has not changed since the most recent financial statements delivered by Holdings to the Lenders or if GAAP has changed describing such changes in detail and explaining how such changes affect the financial statements. All calculations made for the purposes of determining compliance with this Agreement shall (except as otherwise expressly provided herein) be made by application of GAAP applied on a basis consistent with the most recent annual or quarterly financial statements delivered pursuant to Section 6.01 (or, prior to the delivery of the first financial statements pursuant to Section 6.01, consistent with the financial statements described in Section 5.05(a)); provided, however, if (i) Holdings shall object to determining such compliance on such basis at the time of delivery of such financial statements due to any change in GAAP or the rules promulgated with respect thereto or (ii) either the Administrative Agent or the Required Lenders shall so object in writing within 60 days after delivery of such financial statements (or after the Lenders have been informed of the change in GAAP affecting such financial statements, if later), then such calculations shall be made on a basis consistent with the most recent financial statements delivered by Holdings to the Lenders as to which no such objection shall have been made. Any financial ratios required to be maintained by any Group Company pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.04 Classes and Types of Borrowings. The term “Borrowing” denotes the aggregation of Loans of one or more Lenders made to the Borrower pursuant to Article II on the same date, all of which Loans are of the same Class and Type (subject to Article III) and, except in the case of Base Rate Loans, have the same initial Interest Period. Loans hereunder are distinguished by “Class” and “Type”. The “Class” of a Loan (or of a Commitment to make such a Loan or of a Borrowing comprised of such Loans) refers to whether such Loan is a Revolving Loan or a Term B Loan. The “Type” of a Loan refers to whether such Loan is a Eurodollar Loan or a Base Rate Loan. Identification of a Loan (or a Borrowing) by both Class and Type (e.g., a “Term B Eurodollar Loan”) indicates that such Loan is a Loan of both such Class and such Type (e.g., both a Term B Loan and a Eurodollar Loan) or that such Borrowing is comprised of such Loans.

Section 1.05 Amended and Restated Agreement. This Agreement amends and restates and replaces in its entirety, the Existing Credit Agreement; any reference in any of the other Credit Documents to the Existing Credit Agreement (however defined) shall mean this Agreement and such other Credit Documents are deemed amended hereby.

ARTICLE II THE CREDIT FACILITIES

Section 2.01 Commitments to Lend.

(a) Revolving Loans. Each Revolving Lender severally agrees, on the terms and conditions set forth in this Agreement, to make Revolving Loans to the Borrower pursuant to this Section 2.01(a) from time to time during the Availability Period in amounts such that its Revolving Outstandings shall not exceed (after giving effect to all Revolving Loans repaid, all reimbursements of LC Disbursements made, and all Refunded Swingline Loans paid concurrently with the making of any Revolving Loans) its Revolving Commitment; provided that, immediately after giving effect to each such Revolving Loan, (i) the aggregate Revolving Outstandings shall not exceed the Revolving Committed

Amount and (ii) with respect to each Revolving Lender individually, such Lender's outstanding Revolving Loans plus its (other than the Swingline Lender's in its capacity as such) Participation Interests in outstanding Swingline Loans plus its Participation Interests in outstanding LC Obligations shall not exceed such Lender's Revolving Commitment Percentage of the Revolving Committed Amount. Each Revolving Borrowing shall be in an aggregate principal amount of \$1,000,000 or any larger multiple of \$100,000 (except that any such Borrowing may be in the aggregate amount of the unused Revolving Commitments) and shall be made from the several Revolving Lenders ratably in proportion to their respective Revolving Commitments. Within the foregoing limits, the Borrower may borrow under this Section 2.01(a), repay, or, to the extent permitted by Section 2.09, prepay, Revolving Loans and reborrow under this Section 2.01(a).

(b) Term B Loans. The Existing Term B Loans were made to the Borrower on the Closing Date. Each Incremental Term B Lender severally agrees, on the terms and conditions set forth in this Agreement, to make an Additional Term B Loan to the Borrower on the Effective Date in a principal amount not exceeding its Additional Term B Commitment. The Additional Term B Borrowing shall be made from the several Term B Lenders ratably in proportion to their respective Additional Term B Commitments. The Additional Term B Commitments are not revolving in nature, and amounts repaid or prepaid prior to the Term B Maturity Date may not be reborrowed.

(c) Swingline Loans.

(i) The Swingline Lender agrees, on the terms and subject to the conditions set forth herein and in the other Senior Finance Documents, to make a portion of the Revolving Commitments available to the Borrower from time to time during the Availability Period by making Swingline Loans to the Borrower in Dollars (each such loan, a "Swingline Loan" and, collectively, the "Swingline Loans"); provided that (A) the aggregate principal amount of the Swingline Loans outstanding at any one time shall not exceed the Swingline Committed Amount, (B) with regard to each Lender individually (other than the Swingline Lender in its capacity as such), such Lender's outstanding Revolving Loans plus its Participation Interests in outstanding Swingline Loans plus its Participation Interests in outstanding LC Obligations shall not at any time exceed such Lender's Revolving Commitment Percentage of the Revolving Committed Amount, (C) with regard to the Revolving Lenders collectively, the sum of the aggregate principal amount of Swingline Loans outstanding plus the aggregate amount of Revolving Loans outstanding plus the aggregate amount of LC Obligations outstanding shall not exceed the Revolving Committed Amount and (D) the Swingline Committed Amount shall not exceed the aggregate of the Revolving Commitments then in effect. Swingline Loans shall be made and maintained as Base Rate Loans and may be repaid and reborrowed in accordance with the provisions hereof prior to the Swingline Termination Date. Swingline Loans may be made notwithstanding the fact that such Swingline Loans, when aggregated with the Swingline Lender's other Revolving Outstandings, exceeds its Revolving Commitment. The proceeds of a Swingline Borrowing may not be used, in whole or in part, to refund any prior Swingline Borrowing.

(ii) The principal amount of all Swingline Loans shall be due and payable on the earliest of (A) the Swingline Termination Date, (B) the occurrence of a bankruptcy or similar proceeding with respect to the Borrower or (C) the acceleration of any Loan or the termination of the Revolving Commitments pursuant to Section 8.02.

(iii) With respect to any Swingline Loans that have not been voluntarily prepaid by the Borrower or paid by the Borrower when due under clause (ii) above, the Swingline Lender (by request to the Administrative Agent) or the Administrative Agent at any time may, on one Business Day's notice, require each Revolving Lender, including the Swingline Lender, and each such Lender hereby agrees, subject to the provisions of this Section 2.01(e), to make a Revolving Loan (which shall be

initially funded as a Base Rate Loan) in an amount equal to such Lender's Revolving Commitment Percentage of the amount of the Swingline Loans (the Refunded Swingline Loans) outstanding on the date notice is given.

(iv) In the case of Revolving Loans made by Lenders other than the Swingline Lender under clause (iii) above, each such Revolving Lender shall make the amount of its Revolving Loan available to the Administrative Agent, in same day funds, at the Administrative Agent's Office, not later than 1:00 P.M. on the Business Day next succeeding the date such notice is given. The proceeds of such Revolving Loans shall be immediately delivered to the Swingline Lender (and not to the Borrower) and applied to repay the Refunded Swingline Loans. On the day such Revolving Loans are made, the Swingline Lender's Revolving Commitment Percentage of the Refunded Swingline Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by the Swingline Lender and such portion of the Swingline Loans deemed to be so paid shall no longer be outstanding as Swingline Loans and shall instead be outstanding as Revolving Loans. The Borrower authorizes the Administrative Agent and the Swingline Lender to charge the Borrower's account with the Administrative Agent (up to the amount available in such account) in order to pay immediately to the Swingline Lender the amount of such Refunded Swingline Loans to the extent amounts received from the Revolving Lenders, including amounts deemed to be received from the Swingline Lender, are not sufficient to repay in full such Refunded Swingline Loans. If any portion of any such amount paid (or deemed to be paid) to the Swingline Lender should be recovered by or on behalf of the Borrower from the Swingline Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Revolving Lenders in the manner contemplated by Section 2.13.

(v) A copy of each notice given by the Swingline Lender pursuant to this Section 2.01(c) shall be promptly delivered by the Swingline Lender to the Administrative Agent and the Borrower. Upon the making of a Revolving Loan by a Revolving Lender pursuant to this Section 2.01(c), the amount so funded shall no longer be owed in respect of its Participation Interest in the related Refunded Swingline Loans.

(vi) If as a result of any bankruptcy or similar proceeding, Revolving Loans are not made pursuant to this Section 2.01(c) sufficient to repay any amounts owed to the Swingline Lender as a result of a nonpayment of outstanding Swingline Loans, each Revolving Lender agrees to purchase, and shall be deemed to have purchased, a participation in such outstanding Swingline Loans in an amount equal to its Revolving Commitment Percentage of the unpaid amount together with accrued interest thereon. Upon one Business Day's notice from the Swingline Lender, each Revolving Lender shall deliver to the Swingline Lender an amount equal to its respective Participation Interest in such Swingline Loans in same day funds at the office of the Swingline Lender specified or referred to in Section 10.01. In order to evidence such Participation Interest each Revolving Lender agrees to enter into a participation agreement at the request of the Swingline Lender in form and substance reasonably satisfactory to all parties. In the event any Revolving Lender fails to make available to the Swingline Lender the amount of such Revolving Lender's Participation Interest as provided in this Section 2.01(c)(vi), the Swingline Lender shall be entitled to recover such amount on demand from such Revolving Lender together with interest at the customary rate set by the Swingline Lender for correction of errors among banks in New York City for one Business Day and thereafter at the Base Rate plus the then Applicable Margin for Base Rate Loans.

(vii) Each Revolving Lender's obligation to make Revolving Loans pursuant to clause (iv) above and to purchase Participation Interests in outstanding Swingline Loans pursuant to clause (vi) above shall be absolute and unconditional and shall not be affected by any circumstance, including (without limitation) (i) any set-off, counterclaim, recoupment, defense or other right which such Revolving Lender or any other Person may have against the Swingline Lender, the Borrower, Holdings or

any other Credit Party, (ii) the occurrence or continuance of a Default or an Event of Default or the termination or reduction in the amount of the Revolving Commitments after any such Swingline Loans were made, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, Holdings or any other Person, (iv) any breach of this Agreement or any other Senior Finance Document by the Borrower or any other Lender, (v) whether any condition specified in Article IV is then satisfied or (vi) any other circumstance, happening or event whatsoever, whether or not similar to any of the forgoing. If such Lender does not pay such amount forthwith upon the Swingline Lender's demand therefor, and until such time as such Lender makes the required payment, the Swingline Lender shall be deemed to continue to have outstanding Swingline Loans in the amount of such unpaid Participation Interest for all purposes of the Senior Finance Documents other than those provisions requiring the other Lenders to purchase a participation therein. Further, such Lender shall be deemed to have assigned any and all payments made of principal and interest on its Loans, and any other amounts due to it hereunder to the Swingline Lender to fund Swingline Loans in the amount of the Participation Interest in Swingline Loans that such Lender failed to purchase pursuant to this Section 2.01(c)(vii) until such amount has been purchased (as a result of such assignment or otherwise).

Section 2.02 Notice of Borrowings.

(a) Borrowings Other Than Swingline Loans. Except in the case of Swingline Loans, the Borrower shall give the Administrative Agent a Notice of Borrowing (or telephone notice promptly confirmed by a Notice of Borrowing) not later than 12 noon, on (i) the Business Day of each Base Rate Borrowing and (ii) the third Business Day before each Eurodollar Borrowing. Each such Notice of Borrowing shall be irrevocable and shall specify:

(A) the date of such Borrowing, which shall be a Business Day;

(B) the aggregate principal amount of such Borrowing;

(C) the Class and initial Type of the Loans comprising such Borrowing;

(D) in the case of a Eurodollar Borrowing, the duration of the initial Interest Period applicable thereto, subject to the provisions of the definition of Interest Period and to Section 2.06(a); and

(E) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.03.

If the duration of the initial Interest Period is not specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an initial Interest Period of one month, subject to the provisions of the definition of Interest Period and to Section 2.06(a).

(b) Swingline Borrowings. The Borrower shall request a Swingline Loan by written notice (or telephone notice promptly confirmed in writing) substantially in the form of Exhibit A-4 hereto (a "Swingline Loan Request") to the Swingline Lender and the Administrative Agent not later than 12 Noon on the Business Day of the requested Swingline Loan. Each such notice shall be irrevocable and shall specify (i) that a Swingline Loan is requested, (ii) the date of the requested Swingline Loan (which shall be a Business Day) and (iii) the principal amount of the Swingline Loan requested and, (iv) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.03. Each Swingline Loan shall be made as a Base Rate Loan.

Section 2.03 Notice to Lenders; Funding of Loans.

(a) Notice to Lenders. Upon receipt of a Notice of Borrowing, the Administrative Agent shall promptly notify each Lender of such Lender's ratable share (if any) of the Borrowing referred to therein.

(b) Funding of Loans.

(i) On the date of each Borrowing (other than a Swingline Borrowing), each Lender participating therein shall make available its share of such Borrowing, in Federal or other immediately available funds, to the Administrative Agent at the Administrative Agent's Office. Unless the Administrative Agent determines that any applicable condition specified in Article IV has not been satisfied, the Administrative Agent shall promptly distribute the proceeds to an account designated by the Borrower from time to time in the Applicable Notice of Borrowing (provided such account is the subject of an Account Control Agreement (as defined in the Security Agreement) and is in full force and effect at the date thereof), or if not so identified, credit the amounts so received to the general deposit account of the Borrower with the Administrative Agent or, if a Borrowing shall not occur on such date because any condition precedent herein shall not have been met, promptly return the amounts received from the Lenders in like funds.

(ii) Not later than 3:00 P.M. on the date of each Swingline Borrowing, the Swingline Lender shall, unless the Administrative Agent shall have notified the Swingline Lender that any applicable condition specified in Article IV has not been satisfied, make available the amount of such Swingline Borrowing, in Dollars in Federal or other immediately available funds, to the Borrower at an account designated by the Borrower from time to time in the Swingline Loan Request (provided such account is the subject of an Account Control Agreement (as defined in the Security Agreement) and is in full force and effect at the date thereof), or if not so identified, to the Borrower at the Swingline Lender's address referred to in Section 10.01.

(c) Funding by the Administrative Agent in Anticipation of Amounts Due from the Lenders Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available to the Administrative Agent on the date of such Borrowing in accordance with subsection (b) of this Section 2.03, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such share available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith within two Business Days of such corresponding amount, together with interest thereon for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) a rate per annum equal to the higher of the Federal Funds Rate and the interest rate applicable thereto pursuant to Section 2.06, in the case of the Borrower, and (ii) the Federal Funds Rate, in the case of such Lender. If such Lender shall repay to the Administrative Agent such corresponding amount, such amount so repaid shall constitute such Lender's Loan included in such Borrowing for purposes of this Agreement.

(d) Obligations of Lenders Several. The failure of any Lender to make a Loan required to be made by it as part of any Borrowing hereunder shall not relieve any other Lender of its obligation, if any, hereunder to make any Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on such date of Borrowing.

(c) Failed Loans. If any Lender shall fail to make any Loan (a "Failed Loan") which such Lender is otherwise obligated hereunder to make to the Borrower on the date of Borrowing thereof, and the Administrative Agent shall not have received notice from the Borrower or such Lender that any condition precedent to the making of the Failed Loan has not been satisfied, then, until such Lender shall have made or be deemed to have made (pursuant to the last sentence of this subsection (c)) the Failed Loan in full or the Administrative Agent shall have received notice from the Borrower or such Lender that any condition precedent to the making of the Failed Loan was not satisfied at the time the Failed Loan was to have been made, whenever the Administrative Agent shall receive any amount from the Borrower for the account of such Lender, (i) the amount so received (up to the amount of such Failed Loan) will, upon receipt by the Administrative Agent, be deemed to have been paid to the Lender in satisfaction of the obligation for which paid, without actual disbursement of such amount to the Lender, (ii) the Lender will be deemed to have made the same amount available to the Administrative Agent for disbursement as a Loan to the Borrower (up to the amount of such Failed Loan) and (iii) the Administrative Agent will disburse such amount (up to the amount of the Failed Loan) to the Borrower or, if the Administrative Agent has previously made such amount available to the Borrower on behalf of such Lender pursuant to the provisions hereof, reimburse itself (up to the amount of the amount made available to the Borrower); provided, however, that the Administrative Agent shall have no obligation to disburse any such amount to the Borrower or otherwise apply it or deem it applied as provided herein unless the Administrative Agent shall have determined in its sole discretion that to so disburse such amount will not violate any law, rule, regulation or requirement applicable to the Administrative Agent. Upon any such disbursement by the Administrative Agent, such Lender shall be deemed to have made a Base Rate Loan of the same Class as the Failed Loan to the Borrower in satisfaction, to the extent thereof, of such Lender's obligation to make the Failed Loan.

Section 2.04 Evidence of Loans.

(a) Lender Accounts. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(b) Administrative Agent Records. The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Class and Type of each Loan made and the Interest Period, if any, applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(c) Evidence of Debt. The entries made in the accounts maintained pursuant to subsections (a) and (b) of this Section 2.04 shall be prima facie evidence of the existence and amounts of the obligations therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans made to it in accordance with their terms.

(d) Notes. Notwithstanding any other provision of this Agreement, if any Lender shall request and receive a Note or Notes as provided in Section 10.06 or otherwise, then the Loans of such Lender shall be evidenced by one or more Revolving Notes or Term B Notes, as applicable, in each case, substantially in the form of Exhibit B-1 or B-2 as applicable, payable to the order of such Lender for the account of its Applicable Lending Office in an amount equal to the aggregate unpaid principal amount of such Lender's Revolving Loan or Term B Loan, as applicable. If requested by the Swingline Lender, the Swingline Loans shall be evidenced by a single Swingline Note, substantially in the form of Exhibit

B-3, payable to the order of the Swingline Lender in an amount equal to the aggregate unpaid principal amount of the Swingline Loans.

(c) Note Endorsements. Each Lender having one or more Notes issued by the Borrower shall record the date, amount, Class and Type of each Loan made by it to the Borrower evidenced by such Note and the date and amount of each payment of principal made by the Borrower with respect thereto, and may, if such Lender so elects in connection with any transfer or enforcement of any Note, endorse on the reverse side or on the schedule, if any, forming a part thereof appropriate notations to evidence the foregoing information with respect to each outstanding Loan evidenced thereby; provided that the failure of any Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower hereunder or under any such Note. Each Lender is hereby irrevocably authorized by the Borrower so to endorse each of its Notes and to attach to and make a part of each of its Notes a continuation of any such schedule as and when required.

Section 2.05 Letters of Credit.

(a) Existing Letters of Credit. On the Closing Date, each Issuing Lender that had issued an Existing Letter of Credit was deemed, without further action by any party hereto, to have sold to each Revolving Lender, and each such Revolving Lender was deemed, without further action by any party hereto, to have purchased from each such Issuing Lender, without recourse or warranty, an undivided participation interest in such Existing Letter of Credit and the related LC Obligations in the proportion its Revolving Commitment Percentage borne to the Revolving Committed Amount (although any fronting fee payable under Section 2.11 was payable directly to the Administrative Agent for the accounting of each applicable Issuing Lender, and the Lenders (other than the applicable Issuing Lender) had no right to receive any portion of such fronting fee) and any security therefore or guaranty pertaining thereto. On and after the Closing Date, each Existing Letter of Credit constituted a Letter of Credit for all purposes hereof.

(b) Additional Letters of Credit. The Administrative Agent agrees, on the terms and conditions set forth in this Agreement, to issue letters of credit or guarantees (each an "LC Support Agreement") to an Issuing Lender to induce such Issuing Lender to issue Letters of Credit denominated in Dollars from time to time before the 30th day prior to the Revolving Termination Date for the account, and upon the request, of the Borrower and in support of (i) trade obligations of the Borrower and/or its Subsidiaries, which shall be payable at sight (each such letter of credit, a "Trade Letter of Credit" and, collectively, the "Trade Letters of Credit") and (ii) such other obligations of the Borrower that are acceptable to the Administrative Agent (each such letter of credit, a "Standby Letter of Credit" and, collectively, the "Standby Letters of Credit"); provided that, immediately after each Letter of Credit is issued, (i) the aggregate LC Obligations shall not exceed \$15,000,000 (the "LC Committed Amount"), (ii) the Revolving Outstandings shall not exceed the Revolving Committed Amount, and (iii) with respect to each individual Revolving Lender, the aggregate outstanding principal amount of the Revolving Lender's Revolving Loans plus its Participation Interests in outstanding LC Obligations plus its (other than the Swingline Lender's) Participation Interests in outstanding Swingline Loans shall not exceed such Revolving Lender's Revolving Commitment Percentage of the Revolving Committed Amount. Notwithstanding the foregoing, the account party for each Additional Letter of Credit shall be the Borrower.

(c) Method of Issuance of Letters of Credit. The Borrower shall give the Administrative Agent notice substantially in the form of Exhibit A-3 hereto (a "Letter of Credit Request") of the requested issuance or amendment of a Letter of Credit prior to 1:00 P.M. (Chicago time) on the proposed date of the issuance or amendment of Trade Letters of Credit (which shall be a Business Day) and at least three Business Days before the proposed date of issuance or extension of Standby Letters of

Credit (which shall be a Business Day) (or such shorter period as may be agreed by the applicable Issuing Lender in any particular instance). In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Request shall specify in form and detail reasonably satisfactory to the Administrative Agent: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (vii) such other matters as the Administrative Agent may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Request shall specify in form and detail reasonably satisfactory to the Administrative Agent: (i) the Letter of Credit to be amended; (ii) the proposed date of amendment thereof (which shall be a Business Day); (iii) the nature of the proposed amendment; and (iv) such other matters as the Administrative Agent may require. If requested by the Administrative Agent, the Borrower shall also submit a letter of credit application on the Administrative Agent's standard form in connection with any request for a letter of credit. The extension or renewal of any Letter of Credit shall be deemed to be an issuance of such Letter of Credit. Subject to the provisions of the following paragraph with respect to Evergreen Letters of Credit, no Letter of Credit shall have a term of more than one year or shall have a term extending or be extendible beyond the fifth Business Day before the Revolving Termination Date.

If the Borrower so requests in any applicable Letter of Credit Request, the Administrative Agent may, in its sole and absolute discretion, agree to induce an Issuing Lender to issue a Letter of Credit that has automatic renewal provisions (each, an "Evergreen Letter of Credit"); provided that any such Evergreen Letter of Credit must permit the Issuing Lender to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Nonrenewal Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Administrative Agent, the Borrower shall not be required to make a specific request to the Administrative Agent for any such renewal. Once an Evergreen Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the Issuing Lender to permit the renewal of such Letter of Credit at any time to a date not later than the Revolving Termination Date; provided, however, that the Administrative Agent shall not permit any such renewal if (i) the Issuing Lender would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof or (ii) it has received notice (which may be by telephone or in writing) on or before the Business Day immediately preceding the Nonrenewal Notice Date (A) from the Administrative Agent that the Required Revolving Lenders have elected not to permit such renewal or (B) from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied. Notwithstanding anything to the contrary contained herein, the Issuing Lender shall have no obligation to permit the renewal of any Evergreen Letter of Credit at any time.

Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Issuing Lender will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(d) Conditions to Issuance of Additional Letters of Credit The issuance by the Administrative Agent of an LC Support Agreement to induce an Issuing Lender to issue each Additional Letter of Credit shall, in addition to the conditions precedent set forth in Section 4.02, be subject to the conditions precedent that (i) such Letter of Credit shall be reasonably satisfactory in form and substance to the Administrative Agent, (ii) the Borrower shall have executed and delivered such other instruments and agreements relating to such Letter of Credit as the Administrative Agent shall have reasonably

requested, (iii) on the date of (and after giving effect to) such issuance that (A) the aggregate amount of all LC Obligations will not exceed the LC Committed Amount and (B) the aggregate Revolving Outstandings will not exceed the aggregate amount of the Revolving Commitments and (iv) the Issuing Lender shall not have been notified by the Administrative Agent that any condition specified in Section 4.02(b) or (c) is not satisfied on the date such Additional Letter of Credit is to be issued. Notwithstanding any other provision of this Section 2.05, the Administrative Agent shall not be under any obligation hereunder to issue any LC Support Agreement if: (i) any order, judgment or decree of any Governmental Authority shall by its terms purport to enjoin or restrain the Administrative Agent from issuing such LC Support Agreement, or any requirement of Law applicable to the Administrative Agent or any request or directive (whether or not having a force of Law) from any Governmental Authority with jurisdiction over the Administrative Agent shall prohibit, or request that the Administrative Agent refrain from, the issuance of letters of credit generally or such LC Support Agreement in particular or shall impose upon the Administrative Agent with respect to such LC Support Agreement any restriction, reserve or capital requirement (for which the Administrative Agent is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Administrative Agent any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Administrative Agent in good faith deems material to it; or (ii) the issuance of such LC Support Agreement shall violate any applicable general policies of the Administrative Agent.

(e) Purchase and Sale of Letter of Credit Participations Upon the issuance by an Issuing Lender of an Additional Letter of Credit, the Administrative Agent shall be deemed, without further action by any party hereto, to have sold to each Revolving Lender, and each Revolving Lender shall be deemed, without further action by any party hereto, to have purchased from the Administrative Agent, without recourse or warranty, an undivided Participation Interest in the LC Support Agreement obligations in respect of such Additional Letter of Credit and the related LC Obligations in the proportion its Revolving Commitment Percentage bears to the Revolving Committed Amount (although any fronting fee payable under Section 2.11 shall be payable directly to the Administrative Agent for the account of the applicable Issuing Lender, and the Lenders (other than such Issuing Lender) shall have no right to receive any portion of any such fronting fee) and any security therefor or guaranty pertaining thereto. Upon any change in the Revolving Commitments pursuant to Section 10.06, there shall be an automatic adjustment to the Participation Interests in all outstanding LC Support Agreements to reflect the adjusted Revolving Commitments of the assigning and assignee Lenders or of all Lenders having Revolving Commitments, as the case may be.

(f) Duties of Issuing Lenders and the Administrative Agent to Revolving Lenders; Reliance In determining whether to pay under any Letter of Credit or LC Support Agreement, the relevant Issuing Lender or Administrative Agent as applicable shall not have any obligation relative to the Revolving Lenders participating in such Letter of Credit or any LC Support Agreement other than to determine that any document or documents required to be delivered under a Letter of Credit have been delivered and that they substantially comply on their face with the requirements of such Letter of Credit. Any action taken or omitted to be taken by the Administrative Agent as applicable under or in connection with any LC Support Agreement or Letter of Credit shall not create for the Issuing Lender or Administrative Agent as applicable any resulting liability if taken or omitted in the absence of bad faith, gross negligence or willful misconduct. Each Issuing Lender or the Administrative Agent as applicable shall be entitled (but not obligated) to rely, and shall be fully protected in relying, on the representation and warranty by the Borrower set forth in the last sentence of Section 4.02 to establish whether the conditions specified in paragraphs (b) and (c) of Section 4.02 are met in connection with any issuance or extension of an LC Support Agreement or a Letter of Credit. Each Issuing Lender or the Administrative Agent as applicable shall be entitled to rely, and shall be fully protected in relying, upon advice and statements of legal counsel, independent accountants and other experts selected by such Issuing Lender or Administrative Agent as applicable and upon any Letter of Credit, LC support Agreement draft, writing,

resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopier, telex or teletype message, statement, order or other document believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary unless the beneficiary and the Borrower shall have notified such Issuing Lender or the Administrative Agent as applicable that such documents do not comply with the terms and conditions of the Letter of Credit. Each Issuing Lender and the Administrative Agent shall be fully justified in refusing to take any action requested of it under this Section 2.05 in respect of any Letter of Credit or any LC Support Agreement unless it shall first have received such advice or concurrence of the Required Revolving Lenders as it reasonably deems appropriate or it shall first be indemnified to its reasonable satisfaction by the Revolving Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take, or omitting or continuing to omit, any such action. Notwithstanding any other provision of this Section 2.05, each Issuing Lender and the Administrative Agent and shall in all cases be fully protected in acting, or in refraining from acting, under this Section 2.05 in respect of any LC Support Agreement or Letter of Credit or in accordance with a request of the Required Revolving Lenders, and such request and any action taken or failure to act pursuant hereto shall be binding upon all Revolving Lenders and all future holders of participations in such LC Support Agreement or Letter of Credit.

(g) Reimbursement Obligations. The Borrower shall be irrevocably and unconditionally obligated forthwith to reimburse each Issuing Lender for any amounts paid by such Issuing Lender upon any drawing under any Existing Letter of Credit and reimburse the Administrative Agent upon any payment made by the Administrative Agent pursuant to an LC Support Agreement, together with any and all reasonable charges and expenses which the Issuing Lender or Administrative Agent respectively may pay or incur relative to such drawing or payment and interest on the amount drawn or paid at the rate applicable to Revolving Base Rate Loans for each day from and including the date such amount is drawn or paid to but excluding the date such reimbursement payment is due and payable. Such reimbursement payment shall be due and payable (i) at or before 2:00 P.M. (Chicago time or the relevant local time, as applicable) on the third Business Day after the date the Issuing Lender or Administrative Agent (as the case may be) notifies the Borrower of such drawing or payment; provided that no payment otherwise required by this sentence to be made by the Borrower at or before 2:00 P.M. (Chicago time or the relevant local time, as applicable) on any day shall be overdue hereunder if arrangements for such payment satisfactory to the applicable Issuing Lender or the Administrative Agent, in its reasonable discretion, shall have been made by the Borrower at or before 2:00 P.M. (Chicago time or the relevant local time, as applicable) on such day and such payment is actually made at or before 3:00 P.M. (Chicago time or the relevant local time, as applicable) on such day. In addition to the foregoing, the Borrower agrees to pay to the Issuing Lender and Administrative Agent interest, payable on demand, on any and all amounts not paid by the Borrower to the Issuing Lender or the Administrative Agent (as applicable) when due under this subsection (g), for each day from and including the date when such amount becomes due to but excluding the date such amount is paid in full, whether before or after judgment, at a rate per annum equal to the sum of 2.00% plus the rate applicable to Revolving Base Rate Loans for such day. Subject to the satisfaction of all applicable conditions set forth in Article IV, the Borrower may, at its option, utilize the Swingline Commitment or the Revolving Commitments, or make other arrangements for payment satisfactory to the Issuing Lender or the Administrative Agent, (as applicable) for the reimbursement of all LC Disbursements as required by this subsection (g). Each reimbursement payment to be made by the Borrower pursuant to this subsection (g) shall be made to the Issuing Lender or the Administrative Agent (as applicable) in Federal or other funds immediately available to it at its address referred to in Section 10.01.

(h) Obligations of Revolving Lenders to Reimburse Issuing Lender and the Administrative Agent for Unpaid LC Disbursements If the Borrower shall not have reimbursed an

Issuing Lender or the Administrative Agent (as the case may be) in full for any LC Disbursement as required pursuant to subsection (g) of this Section 2.05, the Issuing Lender shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify each Revolving Lender, (other than the relevant Issuing Lender), and each such Revolving Lender shall promptly and unconditionally pay to the Administrative Agent, for the account of such Issuing Lender; or for itself as the case may be, such Revolving Lender's pro-rata share of such unreimbursed LC Disbursement (each such Lender's pro rata share of such LC Disbursement determined by the proportion its Revolving Commitment Percentage bears to the aggregate Revolving Committed Amount) in Dollars in Federal or other immediately available funds. Such payment from the Revolving Lender shall be due (i) at or before 1:00 P.M. (Chicago time) on the date the Administrative Agent so notifies a Revolving Lender, if such notice is given at or before 10:00 A.M. (Chicago time) on such date or (ii) at or before 10:00 A.M. (Chicago time) on the next succeeding Business Day, together with interest on such amount for each day from and including the date of such drawing to but excluding the day such payment is due from such Revolving Lender at the Federal Funds Rate for such day (which funds, in the case of a failure to reimburse an Issuing Lender under an Existing Letter of Credit, the Administrative Agent shall promptly remit to the applicable Issuing Lender). The failure of any Revolving Lender to make available to the Administrative Agent its pro-rata share of any unreimbursed LC Disbursement shall not relieve any other Revolving Lender of its obligation hereunder to make available to the Administrative Agent its pro-rata share of any payment made under any Letter of Credit or LC Support Agreement (as applicable) on the date required, as specified above, but no such Lender shall be responsible for the failure of any other Lender to make available to the Administrative Agent such other Lender's pro-rata share of any such payment. Upon payment in full of all amounts payable by a Lender under this subsection (h), such Lender shall be subrogated to the rights of the Issuing Lender or the Administrative Agent as applicable against the Borrower to the extent of such Lender's pro-rata share of the related LC Obligation so paid (including interest accrued thereon). If any Revolving Lender fails to pay any amount required to be paid by it pursuant to this subsection (h) on the date on which such payment is due, interest shall accrue on such Lender's obligation to make such payment, for each day from and including the date such payment became due to but excluding the date such Lender makes such payment, whether before or after judgment, at a rate per annum equal to (i) for each day from the date such payment is due to the third succeeding Business Day, inclusive, the Federal Funds Rate for such day as determined by the relevant Issuing Lender and (ii) for each day thereafter, the sum of 2.00% plus the rate applicable to its Revolving Base Rate Loans for such day. Any payment made by any Lender after 3:00 P.M. on any Business Day shall be deemed for purposes of the preceding sentence to have been made on the next succeeding Business Day.

(i) *Obligations in Respect of Letters of Credit Unconditional* The obligations of the Borrower under Section 2.05(g) above shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including, without limitation, the following circumstances:

- (i) any lack of validity or enforceability of this Agreement any LC Support Agreement, or any Letter of Credit or any document related hereto or thereto;
- (ii) any amendment or waiver of or any consent to departure from all or any of the provisions of this Agreement, any LC Support Agreement, or any Letter of Credit or any document related hereto or thereto, in each case consented to by the Borrower;
- (iii) the use which may be made of the Letter of Credit by, or any acts or omission of, a beneficiary of a Letter of Credit (or any Person for whom the beneficiary may be acting);

(iv) the existence of any claim, set-off, defense or other rights that the Borrower may have at any time against a beneficiary of a Letter of Credit (or any Person for whom the beneficiary may be acting), the Administrative Agent, any Issuing Lender or any other Person, whether in connection with this Agreement, any LC Support Agreement or any Letter of Credit or any document related hereto or thereto or any unrelated transaction;

(v) any statement or any other document presented under an LC Support Agreement or a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

(vi) payment under a Letter of Credit against presentation to an Issuing Lender of a draft or certificate that does not comply with the terms of such Letter of Credit; provided that the relevant Issuing Lender's determination that documents presented under such Letter of Credit comply with the terms thereof shall not have constituted gross negligence or willful misconduct of such Issuing Lender; or

(vii) any other act or omission to act or delay of any kind by the Administrative Agent, any Issuing Lender or any other Person or any other event or circumstance whatsoever that might, but for the provisions of this subsection (vii), constitute a legal or equitable discharge of the Borrower's obligations hereunder.

(j) Designation of Subsidiaries as Account Parties. Notwithstanding anything to the contrary set forth in this Agreement, an LC Support Agreement or Letter of Credit issued hereunder may contain a statement to the effect that such Letter of Credit is issued for the account of a Subsidiary of the Borrower; provided that notwithstanding such statement, the Borrower shall be the actual account party for all purposes of this Agreement for such Letter of Credit and such statement shall not affect the Borrower's reimbursement obligations hereunder with respect to such Letter of Credit.

(k) Modification and Extension. The issuance of any supplement, restatement, modification, amendment, renewal, or extensions to any LC Support Agreement or Letter of Credit shall, for purposes hereof, be treated in all respects the same as a Credit Extension hereunder.

(l) Uniform Customs and Practices. Unless otherwise expressly agreed by the Administrative Agent and the Borrower when an LC Support Agreement is issued in support of a Letter of Credit (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each Standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce (the "ICC") at the time of issuance (including the ICC decision published by the Commission on Banking Technique and Practice on April 6, 1998 regarding the European single currency (euro)) shall apply to each Trade Letter of Credit.

(m) Responsibility of Issuing Lenders. It is expressly understood and agreed that the obligations of the Issuing Lenders and Administrative Agent hereunder to the Revolving Lenders are only those expressly set forth in this Agreement and that each Issuing Lender and the Administrative Agent shall be entitled to assume that the conditions precedent set forth in Section 4.02 have been satisfied unless it shall have acquired actual knowledge that any such condition precedent has not been satisfied; provided, however, that nothing set forth in this Section 2.05 shall be deemed to prejudice the right of any Revolving Lender to recover from any Issuing Lender and the Administrative Agent any amounts made available by such Revolving Lender to such Issuing Lender and the Administrative Agent pursuant to this Section 2.05 in the event that it is determined by a court of competent jurisdiction that the payment with

respect to a Letter of Credit or an LC Support Agreement constituted gross negligence or willful misconduct on the part of the Issuing Lender or Administrative Agent (as applicable).

(n) *Conflict with LC Documents.* In the event of any conflict between this Agreement and any LC Document, this Agreement shall govern.

(o) *Indemnification of Issuing Lenders and the Administrative Agent.*

(i) In addition to its other obligations under this Agreement, the Borrower hereby agrees to protect, indemnify, pay and save the Administrative Agent and each Issuing Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that the Administrative Agent and Issuing Lender may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any LC Support Agreement or Letter of Credit as applicable or (B) the failure of the Administrative Agent or such Issuing Lender to honor a drawing under an LC Support Agreement or Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority (all such acts or omissions, herein called "Government Acts").

(ii) As between the Borrower and the Administrative Agent or each Issuing Lender, the Borrower shall assume all risks of the acts or omissions of or the misuse of any Letter of Credit by the beneficiary thereof. The Administrative Agent or Issuing Lender shall not be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any LC Support Agreement or Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) failure of the beneficiary of a Letter of Credit to comply fully with conditions required in order to draw upon a Letter of Credit; (D) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any documents required in order to make a drawing under a Letter of Credit or of the proceeds thereof; and (G) any consequences arising from causes beyond the control of the Administrative Agent or Issuing Lender, including, without limitation, any Government Acts. None of the above shall affect, impair, or prevent the vesting of the Administrative Agent or Issuing Lender's rights or powers hereunder.

(iii) In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by the Administrative Agent or an Issuing Lender, under or in connection with any LC Support Agreement or Letter of Credit or the related certificates, if taken or omitted in good faith, shall not put the Administrative Agent or Issuing Lender under any resulting liability to the Borrower or any other Credit Party other than for gross negligence, bad faith or willful misconduct. It is the intention of the parties that this Agreement shall be construed and applied to protect and indemnify the Administrative Agent or Issuing Lenders against any and all risks involved in the issuance of any LC Support Agreement or Letter of Credit, all of which risks are hereby assumed by the Credit Parties, including, without limitation, any and all risks, whether rightful or wrongful, of any present or future Government Acts. The Administrative Agent or Issuing Lenders shall not, in any way, be liable for any failure by the Administrative Agent or Issuing Lenders or anyone else to pay any drawing under any LC

Support Agreement or Letter of Credit as a result of any Government Acts or any other cause beyond the control of the Issuing Lenders.

(iv) Nothing in this subsection (o) is intended to limit the reimbursement obligation of the Borrower contained in this Section 2.05. The obligations of the Borrower under this subsection (o) shall survive the termination of this Agreement. No act or omission of any current or prior beneficiary of a Letter of Credit shall in any way affect or impair the rights of the Administrative Agent or any Issuing Lender to enforce any right, power or benefit under this Agreement.

(v) Notwithstanding anything to the contrary contained in this subsection (o), the Borrower shall not have any obligation to indemnify the Administrative Agent or any Issuing Lender in respect of any liability to the extent incurred by the Administrative Agent or such Issuing Lender arising solely out of the gross negligence, bad faith, or willful misconduct of the Administrative Agent or Issuing Lender, respectively, as determined by a court of competent jurisdiction. Nothing in this Agreement shall relieve Administrative Agent or any Issuing Lender of any liability to the Borrower in respect of any action taken by the Administrative Agent or such Issuing Lender which action constitutes gross negligence, bad faith or willful misconduct of the Administrative Agent or such Issuing Lender or a violation of the UCP or Uniform Commercial Code, as applicable, as determined by a court of competent jurisdiction.

(p) Cash Collateral. If the Borrower is required pursuant to the terms of this Agreement to Cash Collateralize any LC Obligations, the Borrower shall deposit in an account (which may be an LC Cash Collateral Account under the Security Agreement) with the Collateral Agent an amount in Dollars in cash equal to 105% of such LC Obligations. Such deposit shall be held by the Collateral Agent as collateral for the payment and performance of the LC Obligations. The Collateral Agent shall have exclusive control, including the exclusive right of withdrawal, over each collateral account referred to in this subsection (p). The Collateral Agent will, at the request of the Borrower, invest amounts deposited in such account in Cash Equivalents; provided, however, that (i) the Collateral Agent shall not be required to make any investment that, in its sole judgment, would require or cause the Collateral Agent to be in, or would result in any, violation of any Law, (ii) such Cash Equivalents shall be subjected to a first priority perfected security interest in favor of the Collateral Agent and (iii) if an Event of Default shall have occurred and be continuing, the selection of such Cash Equivalents shall be in the sole discretion of the Collateral Agent. The Borrower shall indemnify the Collateral Agent for any losses relating to such investments in Cash Equivalents. Other than any interest or profits earned on such investments, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Collateral Agent to reimburse the Issuing Lenders immediately for drawings under the applicable Letters of Credit and reimburse the Administrative Agent immediately for payments under the applicable LC Support Agreement and, if the maturity of the Loans has been accelerated, to satisfy the LC Obligations of the Borrower. If the Borrower is required to provide an amount of cash collateral hereunder as a result of an Event of Default, such amount together with any interest or profits earned thereon (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived. If the Borrower is required to provide an amount of cash collateral hereunder pursuant to Section 2.08(a) or 2.09(b)(i), such amount together with any interest or profits earned thereon (to the extent not applied as aforesaid) shall be returned to the Borrower upon demand; provided that, after giving effect to the return, (i) the aggregate Revolving Outstandings would not exceed the Revolving Committed Amount and (ii) no Default or Event of Default shall have occurred and be continuing. If the Borrower is required to deposit an amount of cash collateral hereunder pursuant to Section 2.09(b)(iii), (iv), (v), (vi), or (vii) interest or profits thereon (to the extent not applied as aforesaid) shall be returned to the Borrower after the full amount of such deposit has been applied by the

Collateral Agent to reimburse the Issuing Lender for drawings under Letters of Credit and the Administrative Agent for payments under LC Support Agreements. The Borrower hereby pledges and assigns to the Collateral Agent, for its benefit and the benefit of the Finance Parties, each cash collateral account established by it hereunder (and all monies and investments held therein) to secure its Finance Obligations.

(q) Resignation or Removal of an Issuing Lender. An Issuing Lender may resign at any time by giving 60 days' notice to the Administrative Agent, the Revolving Lenders and the Borrower; provided, however, that such resignation shall not affect the status of any outstanding Letters of Credit issued by such resigning Issuing Lender as set forth in subsection (r) below. Upon any such resignation, the Borrower shall (within 60 days after such notice of resignation) either appoint a successor, or terminate the unutilized LC Commitment of such Issuing Lender; provided, however, that, if the Borrower elects to terminate such unutilized LC Commitment, the Borrower may at any time thereafter that the Revolving Commitments are in effect reinstate such LC Commitment in connection with the appointment of another Issuing Lender. Subject to subsection (r) below, upon the acceptance of any appointment as an Issuing Lender hereunder by a successor Issuing Lender, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Lender and the retiring Issuing Lender shall be discharged from its obligations to issue Additional Letters of Credit hereunder. The acceptance of any appointment as Issuing Lender hereunder by a successor Issuing Lender shall be evidenced by an agreement entered into by such successor, in a form reasonably satisfactory to the Borrower and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor shall be a party hereto and have all the rights and obligations of an Issuing Lender under this Agreement and the other Senior Finance Documents, and (ii) references herein and in the other Senior Finance Documents to the "Issuing Lender" shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require.

(r) Rights with Respect to Outstanding Letters of Credit. After the resignation of an Issuing Lender hereunder the retiring Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement and the other Senior Finance Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue Additional Letters of Credit.

(s) Reporting. Each Issuing Lender will report in writing to the Administrative Agent (i) on the first Business Day of each week, the aggregate amount of the face amount of Letters of Credit issued by it and outstanding as of the last Business Day of the preceding week, (ii) on or prior to each Business Day on which such Issuing Lender expects to issue, amend, renew or extend any Letter of Credit, the date of such issuance or amendment, and the aggregate amount of the face amount of Letters of Credit to be issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and such Issuing Lender shall advise the Administrative Agent on such Business Day whether such issuance, amendment, renewal or extension occurred and whether the amount thereof changed), (iii) on each Business Day on which such Issuing Lender makes any LC Disbursement, the date of such LC Disbursement and the amount of such LC Disbursement and (iv) on any Business Day on which the Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Lender on such day, the date of such failure, the Borrower and the amount, of such LC Disbursement.

Section 2.06 Interest.

(a) Rate Options Applicable to Loans. Each Borrowing shall be comprised of Base Rate Loans or (except in the case of Swingline Loans, which shall be made and maintained as Base Rate

Loans) Eurodollar Loans, as the Borrower may request pursuant to Section 2.02. Borrowings of more than one Type may be outstanding at the same time; provided, however, that the Borrower may not request any Borrowing that, if made, would result in an aggregate of more than 15 separate Groups of Eurodollar Loans being outstanding hereunder at any one time. For this purpose, Loans having different Interest Periods, regardless of whether commencing on the same date, shall be considered separate Groups.

(b) Base Rate Loans. Each Loan of a Class which is made as, or converted into, a Base Rate Loan shall bear interest on the outstanding principal amount thereof, for each day from the date such Loan is made as, or converted into, a Base Rate Loan until it becomes due or is converted into a Loan of any other Type, at a rate per annum equal to the Base Rate for such day plus the then Applicable Margin. Such interest shall be payable in arrears on each Interest Payment Date and, with respect to the principal amount of any Base Rate Loan converted to a Eurodollar Loan, on the date such Base Rate Loan is so converted.

(c) Eurodollar Loans. Each Eurodollar Loan of a Class shall bear interest on the outstanding principal amount thereof, for each day during the Interest Period applicable thereto, at a rate per annum equal to the sum of the applicable Adjusted London Interbank Offered Rate for such Interest Period plus the then Applicable Margin. Such interest shall be payable for each Interest Period on each Interest Payment Date.

(d) Determination and Notice of Interest Rates. The Administrative Agent shall determine each interest rate applicable to the Loans hereunder. The Administrative Agent shall give prompt notice to the Borrower and the participating Lenders of each rate of interest so determined, and its determination thereof shall be conclusive in the absence of manifest error. Any such notice shall, without the necessity of the Administrative Agent so stating in such notice, be subject to the provisions of the definition of "Applicable Margin" providing for adjustments in the Applicable Margin from time to time. When during an Interest Period any event occurs that causes an adjustment in the Applicable Margin applicable to Loans to which such Interest Period is applicable, the Administrative Agent shall give prompt notice to the Borrower and the Lenders of such event and the adjusted rate of interest so determined for such Loans, and its determination thereof shall be conclusive in the absence of manifest error.

(e) Default Interest. Upon the occurrence and during the continuance of an Event of Default under Section 8.01(a) and/or (f), the overdue principal of and, to the extent permitted by law, overdue interest on the Loans and any other overdue amounts owing herein or under the other Senior Finance Documents shall bear interest, payable on demand, at a per annum rate equal to (i) in the case of principal of any Loan, the rate otherwise applicable to such Loan during such period pursuant to this Section 2.06 plus 2.00%, (ii) in the case of interest on any Loan the Base Rate plus the Applicable Margin for Loans of such Class on such day plus 2.00% and (iii) in the case of any other amount, if expressly provided for herein, at the rate so provided and otherwise at the Base Rate plus the Applicable Margin for Revolving Base Rate Loans plus 2.00%.

Section 2.07 Extension and Conversion.

(a) Continuation and Conversion Options. The Loans included in each Borrowing shall bear interest initially at the type of rate allowed by Section 2.06 and as specified by the Borrower in the applicable Notice of Borrowing. Thereafter, the Borrower shall have the option to elect to change or continue the type of interest rate borne by each Group of Loans (subject in each case to the provisions of Article III and subsection 2.07(d)), as follows:

(i) if such Loans are Base Rate Loans, the Borrower may elect pursuant to a Notice of Extension/Conversion to convert such Loans to Eurodollar Loans as of any Business Day; and

(ii) if such Loans are Eurodollar Loans, the Borrower may elect to convert such Loans to Base Rate Loans or elect to continue such Loans as Eurodollar Loans for an additional Interest Period, subject to Section 3.05 in the case of any such conversion or continuation effective on any day other than the last day of the then current Interest Period applicable to such Loans.

Each such election shall be made by delivering a notice, substantially in the form of Exhibit A-2 hereto (a “Notice of Extension/Conversion”) or by telephone promptly confirmed by a Notice of Extension/Conversion, which notice shall not thereafter be revocable by the Borrower, to the Administrative Agent not later than 12:00 Noon on the second Business Day before the conversion or continuation selected in such notice is to be effective. A Notice of Extension/Conversion may, if it so specifies, apply to only a portion of the aggregate principal amount of the relevant Group of Loans; provided that (i) such portion is allocated ratably among the Loans comprising such Group and (ii) the portion to which such Notice applies, and the remaining portion to which it does not apply, are each \$1,000,000 or any larger multiple of \$100,000.

(b) Contents of Notice of Extension/Conversion. Each Notice of Extension/Conversion shall specify:

(i) the Group of Loans (or portion thereof) to which such notice applies;

(ii) the date on which the conversion or continuation selected in such notice is to be effective, which shall comply with the applicable clause of subsection 2.07(a) above;

(iii) if the Loans comprising such Group are to be converted, the new Type of Loans and, if the Loans being converted are to be Eurodollar Loans, the duration of the next succeeding Interest Period applicable thereto; and

(iv) if such Loans are to be continued as Eurodollar Loans for an additional Interest Period, the duration of such additional Interest Period.

Each Interest Period specified in a Notice of Interest Rate Election shall comply with the provisions of the definitions of the term “Interest Period”. If no Notice of Extension/Conversion is timely received prior to the end of an Interest Period for any Group of Eurodollar Loans, the Borrower shall be deemed to have elected that such Group be converted to Base Rate Loans as of the last day of such Interest Period.

(c) Notification to Lenders. Upon receipt of a Notice of Extension/Conversion (written or telephonic as set forth above) from the Borrower pursuant to subsection 2.07(a) above, the Administrative Agent shall promptly notify each Lender of the contents thereof.

(d) Limitation on Conversion/Continuation Options. The Borrower shall not be entitled to elect to convert any Loans to, or continue any Loans for an additional Interest Period as, Eurodollar Loans if (i) the aggregate principal amount of any Group of Eurodollar Loans created or continued as a result of such election would be less than \$1,000,000 or (ii) an Event of Default shall have occurred and be continuing when the Borrower delivers notice of such election to the Administrative Agent. The Borrower shall not be entitled to elect to continue any Eurodollar Loans for an Interest Period

in excess of one month, if a Default shall have occurred and be continuing when the Borrower delivers notice of such election to the Administrative Agent.

(c) Accrued Interest. Accrued interest on a Loan (or portion thereof) being extended or converted shall be paid by the Borrower (i) with respect to any Base Rate Loan being converted to a Eurodollar Loan, on the last day of the first fiscal quarter of the Borrower ending on or after the date of conversion and (ii) otherwise, on the date of extension or conversion.

Section 2.08 Maturity of Loans.

(a) Maturity of Revolving Loans. The Revolving Loans shall mature on the Revolving Termination Date, and any Revolving Loans, Swingline Loans and LC Obligations then outstanding (together with accrued interest thereon and fees in respect thereof) shall be due and payable on such date.

(b) Scheduled Amortization of Term B Loans. The Borrower shall repay, and there shall become due and payable (together with accrued interest thereon) on each Principal Amortization Payment Date, 1/4 of 1% of the aggregate principal amount of the Term B Loans as of the Effective Date and after giving effect to the Additional Term B Loans, in the case of each of the 15 Principal Amortization Payment Dates following the Effective Date and thereafter, the remaining unpaid aggregate principal amount of the Term B Loans, in equal installments on the four final Principal Amortization Dates, and in each case the Term B Loans of each class of each Lender shall be ratably repaid.

Section 2.09 Prepayments.

(a) Voluntary Prepayments. The Borrower shall have the right voluntarily to prepay Loans in whole or in part from time to time, subject to Section 3.05 but otherwise without premium or penalty; provided, however, that (i) each partial prepayment of Loans of any Class shall be in a minimum principal amount of \$1,000,000 and integral multiples of \$100,000 in excess thereof, (ii) the Borrower shall have given prior written or teletype notice (or telephone notice promptly confirmed by written or teletype notice) to the Administrative Agent, (A) in the case of any Revolving Loan which is a Base Rate Loan or any Swingline Loan, by 12 Noon on the date of prepayment and (B), in the case of any other Loan, by 12 Noon at least two Business Days prior to the date of prepayment and (iii) voluntary prepayments of Term B Loans under this Section 2.09(a) shall be applied ratably to the remaining Principal Amortization Payments thereof. Each notice of prepayment shall specify the prepayment date, the principal amount remaining and amount to be prepaid, whether the Loan to be prepaid is a Revolving Loan, Term B Loan or Swingline Loan, whether the Loan to be prepaid is a Eurodollar Loan or a Base Rate Loan and, in the case of a Eurodollar Loan, the Interest Period of such Loan. Each notice of prepayment shall be irrevocable and shall commit the Borrower to prepay such Loan by the amount, and on the date stated therein. Subject to the foregoing, amounts prepaid under this Section 2.09(a) shall be applied as the Borrower may elect; provided that if the Borrower fails to specify the application of a voluntary prepayment, then such prepayment shall be applied first to Revolving Loans to the full extent thereof (without a permanent reduction in the Revolving Committed Amount), then to Swingline Loans to the full extent thereof (without a permanent reduction in the Revolving Committed Amount), then to Term B Loans (ratably to the remaining Principal Amortization Payments thereof), in each case first to Base Rate Loans and then to Eurodollar Loans of the applicable Class in direct order of Interest Period maturity. All prepayments under this Section 2.09(a) shall be accompanied by accrued interest on the principal amount being prepaid to the date of payment. Notwithstanding the foregoing, the Borrower may elect to cause all or a portion of any such prepayment of Term B Loans to be applied to the remaining Principal Amortization Payments thereof in direct order of maturity.

(b) Mandatory Prepayments.

(i) Revolving Committed Amount. If on any date the aggregate Revolving Outstandings exceed the Revolving Committed Amount, the Borrower shall repay, and there shall become due and payable (together with accrued interest thereon), on such date an aggregate principal amount of Swingline Loans equal to such excess. If the outstanding Swingline Loans have been repaid in full, the Borrower shall prepay, and there shall become due and payable (together with accrued interest thereon), Revolving Loans in such amounts as are necessary so that, after giving effect to the repayment of the Swingline Loans and the repayment of Revolving Loans, the aggregate Revolving Outstandings do not exceed the Revolving Committed Amount. If the outstanding Revolving Loans and Swingline Loans have been repaid in full, the Borrower shall Cash Collateralize LC Obligations so that, after giving effect to the repayment of Swingline Loans and Revolving Loans and the Cash Collateralization of LC Obligations pursuant to this subsection (i), the aggregate Revolving Outstandings do not exceed the Revolving Committed Amount. In determining the aggregate Revolving Outstandings for purposes of this subsection (i), LC Obligations shall be reduced to the extent that they are Cash Collateralized as contemplated by this subsection (i). Each prepayment of Revolving Loans required pursuant to this subsection (i) shall be applied ratably among outstanding Revolving Loans based on the respective amounts of principal then outstanding. Each Cash Collateralization of LC Obligations required by this subsection (i) shall be applied ratably among LC Obligations based on the respective amounts thereof then outstanding.

(ii) Excess Cash Flow. Within 125 days after the end of each fiscal year of the Borrower (commencing with the fiscal year ending December 31, 2006), the Borrower shall prepay the Loans and/or Cash Collateralize or pay the LC Obligations in an aggregate amount equal to (A) 75% of the Excess Cash Flow for such prior fiscal year if the Leverage Ratio as of the last day of such prior fiscal year was equal to or greater than 3.0 to 1.0, (B) 50% of the Excess Cash Flow for such prior fiscal year, if the Leverage Ratio as of the last day of such prior fiscal year was less than 3.0 to 1.0 but equal to or greater than 2.0 to 1.0 or (C) 25% of the Excess Cash Flow for the prior fiscal year, if the Leverage Ratio as of the last day of such prior fiscal year was less than 2.0 to 1.0. Notwithstanding the foregoing, if on the date of such prepayment, a payment in respect of the Junior Debentures would not be permitted pursuant to Section 7.08 (d) below, the Borrower shall prepay the Loans and/or Cash Collateralize or pay the LC Obligations in an aggregate amount equal to 75% of the Excess Cash Flow for such prior fiscal year.

(iii) Asset Dispositions, Casualties and Condemnations, etc. Within five Business Days after receipt by any Group Company of proceeds from any Asset Disposition (other than any Excluded Asset Disposition), Casualty or Condemnation, the Borrower shall prepay the Loans and/or Cash Collateralize or pay the LC Obligations in an aggregate amount equal to 100% of the Net Cash Proceeds of such Asset Disposition, Casualty or Condemnation, as applicable

(iv) Debt Issuances. Within five Business Days after receipt by any Group Company of proceeds from any Debt Issuance (other than such Debt Issuance permitted pursuant to Section 7.01 of this Agreement), the Borrower shall prepay the Loans and/or Cash Collateralize the LC Obligations in an aggregate amount equal to 100% of the Net Cash Proceeds of such Debt Issuance.

(v) Equity Issuances. Within five Business Days after receipt by any Group Company of proceeds from any Equity Issuance (other than any Excluded Equity Issuance), the Borrower shall prepay the Loans and/or Cash Collateralize the LC Obligations in an aggregate

amount equal to (A) 75% of the Net Cash Proceeds of such Equity Issuance if the Leverage Ratio as of the last day of the fiscal quarter on a Pro-Forma Basis (as confirmed by the delivery of the Pro-Forma Compliance Certificate) of the Borrower ending on or most recently preceding the date of the receipt of such proceeds was equal to or greater than 3.5 to 1.0, (B) 50% of the Net Cash Proceeds of such Equity Issuance, if the Leverage Ratio as of the last day of the fiscal quarter on a Pro-Forma Basis (as confirmed by the delivery of the Pro-Forma Compliance Certificate) of the Borrower ending on or most recently preceding the date of the receipt of such proceeds was less than 3.5 to 1.0 but equal to or greater than 2.5 to 1.0, and (C) 25% of the Net Cash Proceeds of such Equity Issuance, if the Leverage Ratio as of the last day of the fiscal year of the Borrower ending on or most recently preceding the date of the receipt of such proceeds was less than 2.5 to 1.0, and in each case, Holdings shall have delivered to the Administrative Agent a Pro-Forma Compliance Certificate in connection therewith.

(vi) Payments in Respect of Subordinated Debt. Immediately upon receipt by the Administrative Agent or any Lender of any amount pursuant to the subordination provision of any Debt of Holdings or any of its Subsidiaries that is subordinate to the Senior Obligations, all proceeds thereof shall be applied as set forth in subsection (vii)(B) below.

(vii) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section 2.09(b) shall be applied as follows:

(A) with respect to all amounts paid pursuant to Section 2.09(b)(i) in the order provided in such Section; and

(B) with respect to all amounts paid pursuant to Section 2.09(b)(ii), (iii), (iv), (v) or (vi) (1) first, to the Term B Loans (ratably to the remaining Principal Amortization Payments thereof, provided that the Borrower may elect to cause all or a portion of such prepayment of Term B Loans to be applied to the remaining Principal Amortization Payments thereof in direct order of maturity, due in the twelve month period commencing on the date of prepayment) and (2) second, (x) to the Revolving Loans (with a corresponding reduction in the Revolving Committed Amount pursuant to Section 2.10(b)), (y) then to Swingline Loans (with a corresponding reduction in the Revolving Committed Amount and the Swingline Committed Amount pursuant to Section 2.10(b)), and (z) then to Cash Collateralize LC Obligations.

(viii) Order of Applications. All amounts allocated to Revolving Outstandings as provided in this Section 2.09(b) shall be applied, first, to Swingline Loans, second, after all Swingline Loans have been repaid, to Revolving Loans, and third, after all Revolving Loans have been repaid, to Cash Collateralize or pay the LC Obligations; provided that any balance of such amounts remaining after all Revolving Loans have been repaid and, if applicable, all LC Obligations have been Cash Collateralized shall be applied to the Term B Loans in each case ratably to the remaining Principal Amortization Payments thereof. Within the parameters of the applications set forth above, prepayments of Revolving Loans and Term B Loans shall be applied first to Base Rate Loans and then, subject to subsection (ix) below, to Eurodollar Loans in direct order of Interest Period maturities. All prepayments under this Section 2.09(b) shall be subject to Section 3.05. All prepayments under this Section 2.09(b) shall be accompanied by accrued interest on the principal amount being prepaid to the date of payment.

(ix) Prepayment Accounts. Amounts to be applied as provided in subsection (vii) above to the prepayment of Revolving Loans or Term B Loans shall be applied first to reduce outstanding Base Rate Loans of such Class. Any amounts remaining after each

such application shall, at the option of the Borrower, be applied to prepay Eurodollar Loans of such Class immediately and/or shall be deposited in a separate Prepayment Account (as defined below) for the Loans of such Class. The Administrative Agent shall apply any cash deposited in the Prepayment Account for any Class of Loans, upon withdrawal by the Collateral Agent, to prepay Eurodollar Loans of such Class on the last day of their respective Interest Periods (or, at the direction of the Borrower, on any earlier date) until all outstanding Loans of such Class have been prepaid or until all the allocable cash on deposit in the Prepayment Account for such Class has been exhausted. Concurrently with such application, the aggregate amount of any interest or profits earned on the amount so applied shall be withdrawn by the Collateral Agent and paid to the order of the Borrower. For purposes of this Agreement, the term “Prepayment Account” for any Class of Loans shall mean an account (which may include the Prepayment Account established under the Security Agreement) established by the Borrower with the Collateral Agent and over which the Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal for application in accordance with this subsection (ix). The Collateral Agent will, at the request of the Borrower, invest amounts on deposit in the Prepayment Account for any Class of Loans in Cash Equivalents that mature prior to the last day of the applicable Interest Periods of the Eurodollar Loans of such Class to be prepaid; provided, however, that (i) the Collateral Agent shall not be required to make any investment that, in its sole judgment, would require or cause the Collateral Agent to be in, or would result in any, violation of any Law, (ii) such Cash Equivalents shall be subjected to a first priority perfected security interest in favor of the Collateral Agent and (iii) if any Event of Default shall have occurred and be continuing, the selection of such Cash Equivalents shall be in the sole discretion of the Collateral Agent. The Borrower shall indemnify the Collateral Agent for any losses relating to such investments in Cash Equivalents so that the amount available to prepay Eurodollar Loans on the last day of the applicable Interest Periods is not less than the amount that would have been available had no investments been made pursuant thereto. Other than any interest or profits earned on such investments, the Prepayment Accounts shall not bear interest. Interest or profits, if any, on the investments in any Prepayment Account shall accumulate in such Prepayment Account and be paid to the Borrower as provided above. If the maturity of the Loans has been accelerated pursuant to Section 8.02, the Administrative Agent may, in its sole discretion, cause the Collateral Agent to withdraw amounts on deposit in the Prepayment Account for any Class of Loans and apply such funds to satisfy any of the Senior Obligations related to such Class of Loans.

(x) Payments Cumulative. Except as otherwise expressly provided in this Section 2.09, payments required under any subsection or clause of this Section 2.09 are in addition to payments made or required under any other subsection or clause of this Section 2.09.

(xi) Notice. The Borrower shall give to the Administrative Agent and the Lenders at least five Business Days’ prior written or teletype notice of each and every event or occurrence requiring a prepayment under Section 2.09(b)(iii), (iv), (v) or (vi), including the amount of Net Cash Proceeds expected to be received therefrom and the expected schedule for receiving such proceeds; provided, however, that in the case of any prepayment event consisting of a Casualty or Condemnation, the Borrower shall give such notice within five Business Days after the occurrence of such event.

Section 2.10 Adjustment of Commitments.

(a) Optional Termination or Reduction of Commitments (Pro-Rata). The Borrower may from time to time permanently reduce or terminate the Revolving Committed Amount in whole or in part (in minimum aggregate amounts of \$1,000,000 or in integral multiples of \$100,000 in excess thereof

(or, if less, the full remaining amount of the then applicable Revolving Committed Amount)) upon two Business Days' prior written or teletype notice to the Administrative Agent; provided, however, that no such termination or reduction shall be made which would cause the Revolving Outstandings to exceed the Revolving Committed Amount as so reduced unless, concurrently with such termination or reduction, the Revolving Loans are repaid or, if no Revolving Loans are outstanding, the Swingline Loans are repaid and, after the Swingline Loans have been paid in full, the LC Obligations are Cash Collateralized to the extent necessary to eliminate such excess. The Administrative Agent shall promptly notify each affected Lender of the receipt by the Administrative Agent of any notice from the Borrower pursuant to this Section 2.10(a). Any partial reduction of the Revolving Committed Amount pursuant to this Section 2.10(a) shall be applied to the Revolving Commitments of the Lenders of the applicable Class pro-rata based upon their respective Revolving Commitment Percentages. The Borrower shall pay to the Administrative Agent for the account of the Lenders in accordance with the terms of Section 2.11, on the date of each termination or reduction of the Revolving Committed Amount, any fees accrued through the date of such termination or reduction on the amount of the Revolving Committed Amount so terminated or reduced.

(b) Mandatory Reductions.

On any date that any Revolving Loans are required to be prepaid, Swingline Loans are required to be prepaid and/or LC Obligations are required to be Cash Collateralized pursuant to the terms of Section 2.09(b), (iv), (v) or (vi) (or would be so required if any Revolving Loans, Swingline Loans or LC Obligations were outstanding), the Revolving Committed Amount shall be automatically and permanently reduced by the total amount of such required prepayments and cash collateral (and, in the event that the amount of any payment referred to in Section 2.09(b), (iv), (v) or (vi) which is allocable to the Revolving Outstandings exceeds the amount of all outstanding Revolving Outstandings, the Revolving Committed Amount shall be further reduced by 100% of such excess).

(c) Termination. The Revolving Commitments of the Lenders and the LC Commitments of the Issuing Lenders shall terminate automatically on the Revolving Termination Date. The Swingline Commitment of the Swingline Lender shall terminate automatically on the Swingline Termination Date. The Additional Term B Commitments of the Lenders shall terminate automatically immediately after the making of the Additional Term B Loans on the Effective Date.

(d) Optional Termination of Commitments (Non-Pro-Rata). If (i) any Lender has demanded compensation or indemnification pursuant to Section 3.01 or Section 3.04, (ii) the obligation of any Lender to make Eurodollar Loans has been suspended pursuant to Section 3.02, (iii) any Lender is a Defaulting Lender or (iv) any Lender has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 10.03 or any other provision of any Senior Finance Document requires the consent of more than the Required Lenders and with respect to which the Required Lenders shall have granted their consent, the Borrower shall have the right, if no Default or Event of Default then exists, to (i) remove such Lender by terminating such Lender's Commitment in full or (ii) replace such Lender by causing such Lender to assign its Commitment to one or more existing Lenders or Eligible Assignees pursuant to Section 10.06; provided, however, that if the Borrower elects to exercise such right with respect to any Lender pursuant to clause (i) or (ii) above, it shall be obligated to remove or replace, as the case may be, all Lenders that have similar requests then outstanding for compensation pursuant to Section 3.01 or 3.04 or whose obligation to make Eurodollar Loans has been similarly suspended. The replacement of a Lender pursuant to this Section 2.10(d) shall be effective on the date of notice of such replacement to the Lenders through the Administrative Agent (the "Replacement Date"), subject to the satisfaction of the following conditions:

(i) each replacement Lender and/or Eligible Assignee, and the Administrative Agent acting on behalf of each Lender subject to replacement, shall have satisfied the conditions to an Assignment and Acceptance set forth in Section 10.06(b) and, in connection therewith, the replacement Lender(s) and/or Eligible Assignee(s) shall pay:

(A) to each Lender subject to replacement an amount equal in the aggregate to the sum of (x) the principal of, and all accrued but unpaid interest on, its outstanding Loans, (y) the amount of all LC Disbursements that have been funded by (and not reimbursed to) it under Section 2.05, together with all accrued but unpaid interest with respect thereto, and (z) all accrued but unpaid fees owing to it pursuant to Section 2.11; and

(B) to the Issuing Lenders an amount equal to the aggregate amount owing by the replaced Lenders to the Issuing Lenders as reimbursement pursuant to Section 2.05, to the extent such amount was not theretofore funded by such replaced Lenders; and

(ii) the Borrower shall have paid to the Administrative Agent for the account of each replaced Lender an amount equal to all obligations owing to such replaced Lenders by the Borrower pursuant to this Agreement and the other Senior Finance Documents (other than those obligations of the Borrower referred to in clause (i)(A) above).

In the case of the removal of a Lender pursuant to this Section 2.10(d), upon (i) payment by the Borrower to the Administrative Agent for the account of the Lender subject to such removal of an amount equal to the sum of (A) the aggregate principal amount of all Loans and LC Obligations held by such Lender and (B) all accrued interest, fees and other amounts owing to such Lender hereunder, including, without limitation, all amounts payable by the Borrower to such Lender under Article III or Sections 10.04 and 10.05, and (ii) provision by the Borrower to the Swingline Lender and each Issuing Lender of appropriate assurances and indemnities (which may include letters of credit) as each may reasonably require with respect to any continuing obligation of such removed Lender to purchase Participation Interests in any LC Obligations or Swingline Loans then outstanding, such Lender shall, without any further consent or other action by it, cease to constitute a Lender hereunder; provided that the provisions of this Agreement (including, without limitation, the provisions of Article III and Sections 10.04 and 10.05) shall continue to govern the rights and obligations of a removed Lender with respect to any Loans made, any Letters of Credit issued or any other actions taken by such removed Lender while it was a Lender.

(c) General. The Borrower shall pay to the Administrative Agent for the account of the Lenders in accordance with the terms of Section 2.11, on the date of each termination or reduction of the Revolving Committed Amount, the Commitment Fee accrued through the date of such termination or reduction on the amount of the Revolving Committed Amount so terminated or reduced.

Section 2.11 Fees.

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender a fee (the "Commitment Fee") on such Lender's Revolving Commitment Percentage of the daily Unused Revolving Committed Amount, computed at a per annum rate for each day equal to 0.50%. The Commitment Fee shall commence to accrue on the Effective Date and shall be due and payable in arrears on the last Business Day of each March, June, September and December (and any date that the Revolving Committed Amount is reduced as provided in Section 2.10(a) or (b) and the Revolving Termination Date for the applicable Class) for the quarter or portion thereof

ending on each such date, beginning with the first of such dates to occur after the Effective Date; provided that, the Commitment Fees to be paid by the Borrower on the first of such dates to occur after the Effective Date shall include all Commitment Fees accrued under (and as defined in) the Existing Credit Agreement to the extent such Commitment Fees remain unpaid as of the Effective Date.

(b) Letter of Credit Fees.

(i) Letter of Credit Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender a fee (the "Letter of Credit Fee") on such Lender's Revolving Commitment Percentage of the average daily maximum amount available to be drawn under each such Letter of Credit computed at a per annum rate for each day from the date of issuance to the date of expiration equal to the Applicable Margin for Letter of Credit Fees in effect from time to time. The Letter of Credit Fee will be payable quarterly in arrears on the last Business Day of each March, June, September and December for the immediately preceding quarter (or portion thereof), beginning with the first of such dates to occur after the date of issuance of such Letter of Credit, and on the Revolving Termination Date.

(ii) Fronting Fees. The Borrower shall pay directly to each Issuing Lender for its own account a fronting fee with respect to each Letter of Credit, in an amount to be agreed between the Borrower and the relevant Issuing Lender, such fronting fee to be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date after the issuance of such Letter of Credit, and on the Revolving Termination Date.

(iii) Issuing Lender Fees. In addition to the Letter of Credit Fee payable pursuant to clause (i) above and any fronting fees payable pursuant to clause (ii) above, the Borrower promises to pay to the Issuing Lender for its own account without sharing by the other Lenders the letter of credit fronting and negotiation fees agreed to by the Borrower and the Issuing Lender from time to time and the customary charges from time to time of the Issuing Lender with respect to the issuance, amendment, transfer, administration, cancellation and conversion of, and drawings under, each Letter of Credit (collectively, the "Issuing Lender Fees").

(iv) Computation of Certain Fees after Default. Upon the occurrence and during the continuance of a payment or insolvency Event of Default under Section 8.01(a) and/or (f) any overdue Letter of Credit Fee payable under subsection (i) above shall be computed at a rate per annum equal to the relevant "Applicable Margin for Letter of Credit Fee" as set forth in the applicable table in the definition of "Applicable Margin" in Section 1.01 hereof plus 2.00%.

Section 2.12 Pro-Rata Treatment. Except to the extent otherwise provided herein:

(a) Loans. Each Borrowing, each payment or prepayment of principal of or interest on any Loan, each payment of fees (other than the Issuing Lender Fees retained by an Issuing Lender for its own account and the administrative fees retained by the Agents for their own account), each reduction of the Revolving Committed Amount and each conversion or continuation of any Loan, shall be allocated pro-rata among the relevant Lenders in accordance with the respective Revolving Commitment Percentages and Term B Commitment Percentages, as applicable, of such Lenders (or, if the Commitments of such Lenders have expired or been terminated, in accordance with the respective principal amounts of the outstanding Loans of the applicable Class and Participation Interests of such Lenders); provided that, in the event any amount paid to any Lender pursuant to this subsection (a) is rescinded or must otherwise be returned by the Administrative Agent, each Lender shall, upon the request

of the Administrative Agent, repay to the Administrative Agent the amount so paid to such Lender, with interest for the period commencing on the date such payment is returned by the Administrative Agent until the date the Administrative Agent receives such repayment at a rate per annum equal to, during the period to but excluding the date two Business Days after such request, the Federal Funds Rate, and thereafter, the Base Rate plus 2.00% per annum.

(b) Letters of Credit. Each payment of LC Obligations shall be allocated to each Revolving Lender pro-rata in accordance with its Revolving Commitment Percentage; provided that, if any Revolving Lender shall have failed to pay its applicable pro-rata share of any LC Disbursement, then any amount to which such Revolving Lender would otherwise be entitled pursuant to this subsection (b) shall instead be payable to the Issuing Lender; provided, further, that in the event any amount paid to any Revolving Lender pursuant to this subsection (b) is rescinded or must otherwise be returned by the Issuing Lender, each Revolving Lender shall, upon the request of the Issuing Lender, repay to the Administrative Agent for the account of the Issuing Lender the amount so paid to such Revolving Lender, with interest for the period commencing on the date such payment is returned by the Issuing Lender until the date the Issuing Lender receives such repayment at a rate per annum equal to, during the period to but excluding the date two Business Days after such request, the Federal Funds Rate, and thereafter, the Base Rate plus 2.00% per annum.

Section 2.13 Sharing of Payments. The Lenders agree among themselves that, except to the extent otherwise provided herein, if any Lender shall obtain payment in respect of any Loan, unreimbursed LC Disbursements or any other obligation owing to such Lender under this Agreement through the exercise of a right of setoff, banker's lien or counterclaim, or pursuant to a secured claim under Section 506 of the Bankruptcy Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, in excess of its pro-rata share of such payment as provided for in this Agreement, such Lender shall promptly pay in cash or purchase from the other Lenders a participation in such Loans, unreimbursed LC Disbursements, and other obligations in such amounts, and make such other adjustments from time to time, as shall be equitable to the end that all Lenders share such payment in accordance with their respective ratable shares as provided for in this Agreement; provided that nothing in this Section 2.13 shall impair the right of any Lender to exercise any right of set-off or counterclaim it may have for payment of indebtedness of the Borrower other than its indebtedness hereunder. The Lenders further agree among themselves that if payment to a Lender obtained by such Lender through the exercise of a right of setoff, banker's lien, counterclaim or other event as aforesaid shall be rescinded or must otherwise be restored, each Lender which shall have shared the benefit of such payment shall, by payment in cash or a repurchase of a participation theretofore sold, return its share of that benefit (together with its share of any accrued interest payable with respect thereto) to each Lender whose payment shall have been rescinded or otherwise restored. Holdings and the Borrower agree that any Lender so purchasing such a participation may, to the fullest extent permitted by law, exercise all rights of payment, including setoff, banker's lien or counterclaim, with respect to such participation as fully as if such Lender were a holder of such Loan, LC Obligation or other obligation in the amount of such participation. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section 2.13 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders under this Section 2.13 to share in the benefits of any recovery on such secured claim.

Section 2.14 Payments; Computations.

(a) Payments by the Borrower. Each payment of principal of and interest on Loans, LC Obligations and fees hereunder (other than fees payable directly to the Issuing Lenders) shall be paid not later than 2:00 P.M. on the date when due, in Federal or other funds immediately available to the

Administrative Agent at the account designated by it by notice to the Borrower. Each such payment shall be made irrespective of any set-off, counterclaim or defense to payment which might in the absence of this provision be asserted by the Borrower or any Affiliate against any Agent or any Lender. Payments received after 2:00 P.M. shall be deemed to have been received on the next Business Day. The Borrower shall, at the time it makes any payments under this Agreement, specify to the Administrative Agent the Loan, Letters of Credit, fees or other amounts payable by the Borrower hereunder to which such payment is to be applied (and any such specified application would be inconsistent with the terms hereof, the Administrative Agent shall, subject to Section 2.12, distribute such payment to the Lenders in such manner as the Administrative Agent may deem reasonably appropriate). The Administrative Agent will distribute such payments to the applicable Lenders on the date of receipt thereof, if such payment is received prior to 2:00 P.M.; otherwise the Administrative Agent may, in its sole discretion distribute such payment to the applicable Lenders on the date of receipt thereof or on the immediately succeeding Business Day. Whenever any payment hereunder shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case the date for payment thereof shall be the next preceding Business Day. If the date for any payment of principal is extended by operation of law or otherwise, interest thereon shall be payable for such extended time. The Borrower hereby authorizes and directs each Agent to debit any account maintained by the Borrower for such purpose with such Agent to pay when due any amounts required to be paid from time to time under this Agreement as directed at such time(s) by the Borrower.

(b) Distributions by the Administrative Agent. Unless the Administrative Agent shall have received notice (written or telephonic) from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made such payment in full to the Administrative Agent on such date, and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent that the Borrower shall not have so made such payment, each Lender shall repay to the Administrative Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Administrative Agent, at the Federal Funds Rate.

(c) Computations. Except for interest on Base Rate Loans which shall be computed on the basis of a 365 or 366 day year as the case may be (unless the Base Rate is determined by reference to the Federal Funds Rate), all computations of interest and fees hereunder shall be made on the basis of the actual number of days elapsed over a year of 360 days. Interest shall accrue from and including the date of borrowing (or continuation or conversion) but excluding the date of payment.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Payments Net of Certain Taxes. Any and all payments by any Credit Party to or for the account of any Lender or any Agent hereunder or under any other Senior Finance Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding any and all Excluded Taxes (all such non-Excluded Taxes being hereinafter referred to as "Taxes"). If any Credit Party shall be required by law to deduct or withhold any Taxes from or in respect of any sum payable under this Agreement or any other Senior Finance Document to any Lender or any Agent, (i) the sum payable shall be increased as necessary so that after making all required deductions and withholdings

(including deductions and withholdings applicable to additional sums payable under this Section 3.01) such Lender or such Agent receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) such Credit Party shall make such deductions and withholdings, (ii) such Credit Party shall pay the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable law and (iv) such Credit Party shall furnish to the Administrative Agent, at the Administrative Agent's Office, the original or a certified copy of a receipt, if any, evidencing payment thereof or other documentation evidencing such payment.

(b) Other Taxes. In addition, the Borrower agrees to pay any and all present or future stamp or documentary, excise or property taxes or similar charges or levies (including mortgage recording taxes) which arise from any payment made by it under this Agreement or any other Senior Finance Document or from the execution, delivery, registration or enforcement of, or otherwise with respect to, this Agreement or any other Senior Finance Document (hereinafter referred to as "Other Taxes").

(c) Additional Taxes. The Borrower agrees to indemnify each Lender and each Agent for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 3.01), as applicable, whether or not correctly or legally asserted, paid by such Lender or such Agent (as the case may be) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto; provided, however, that if the Borrower reasonably believes that such Taxes or Other Taxes were not correctly or legally asserted, the Administrative Agent or the Lender, as the case may be, will use reasonable efforts to cooperate with the Borrower to obtain a refund of such Taxes or other Taxes so long as such efforts would not, in the sole discretion of the Administrative Agent or the Lender, as the case may be, result in any additional costs, expenses or risks or be otherwise disadvantageous to it.

(d) U.S. Tax Forms and Certificates. Each Lender organized under the laws of a jurisdiction outside the United States (a "Non-U.S. Lender"), on or prior to the date of its execution and delivery of this Agreement in the case of each Lender listed on the signature pages hereof and on or prior to the date on which it becomes a Lender in the case of each other Lender, and from time to time thereafter as required by law, shall provide the Borrower and the Administrative Agent with (i) Internal Revenue Service Form W-8 BEN, W-8 IMY or W-8 ECI, as appropriate, or any successor form prescribed by the Internal Revenue Service, certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party which reduces the rate of withholding tax on payments of interest or certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, and (ii) any other form or certificate required by any taxing authority (including any certificate required by Sections 871(h) and 881(c) of the Internal Revenue Code), certifying that such Lender is entitled to an exemption from or a reduced rate of tax on payments pursuant to this Agreement or any of the other Senior Finance Documents. Should a Lender, which is otherwise exempt from or subject to a reduced rate of withholding tax, become subject to Taxes because of its failure to deliver a form required to be delivered hereunder, the Borrower shall take such steps as such Lender shall reasonably request to assist such Lender to recover such Taxes.

(e) Obligations in Respect of Non-U.S. Lenders. The Borrower shall not be required to indemnify any Non-U.S. Lender or to pay any additional amounts to any Non-U.S. Lender, in respect of Taxes (other than Other Taxes) pursuant to subsection (a) above to the extent that the obligation to withhold amounts with respect to Taxes (other than Other Taxes) existed on the date such Non-U.S. Lender became a party to this Agreement (or, in the case of a participant, on the date such participant acquired its participation interest) or, with respect to payments to a new Applicable Lending Office, the date such Non-U.S. Lender designated such new Applicable Lending Office with respect to a Loan;

provided, however, that this subsection (e) shall not apply (i) to any participant or new Applicable Lending Office that becomes a participant or new Applicable Lending Office as a result of an assignment, participation, transfer or designation made at the request of the Borrower and (ii) to the extent the indemnity payment or additional amounts any participant, or any Lender acting through a new Applicable Lending Office, would be entitled to receive (without regard to this subsection (e)) do not exceed the indemnity payment or additional amounts that the Person making the assignment, participation or transfer to such participant, or Lender (or participant) making the designation of such new Applicable Lending Office, would have been entitled to receive in the absence of such assignment, participation, transfer or designation.

(f) Mitigation. If any Credit Party is required to pay additional amounts to or for the account of any Lender pursuant to this Section 3.01, then such Lender will agree to use reasonable efforts to change the jurisdiction of its Applicable Lending Office or to file or deliver to the Borrower any certificate or document so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, filing or delivery, in the judgment of such Lender, is not otherwise disadvantageous to such Lender.

(g) Tax Receipts. Within thirty days after the date of any payment of Taxes, the Borrower shall furnish to the Administrative Agent the original or a certified copy of a receipt evidencing such payment (to the extent the Borrower receives a receipt for such payment).

(h) Refunds or Credits. If any Lender or Agent (i) receives a refund from a taxation authority in respect of any tax for which it has been indemnified by a Credit Party or with respect to which a Credit Party has paid additional amounts pursuant to this Section 3.01 or (ii) claims any credit or other tax benefit (such credit to include any increase in any foreign tax credit) with respect to any tax for which it has been indemnified by a Credit Party or with respect to which a Credit Party has paid additional amounts pursuant to this Section 3.01, which refund, credit or other tax benefit in the sole judgment of such Lender or Agent is directly attributable to any such indemnified tax or additional amounts, such Lender or Agent shall (within 30 days from the date of such receipt) pay over to such Credit Party the amount of such refund, credit or other tax benefit (but only to the extent of indemnity payments made, or additional amounts paid, by such Credit Party with respect to the tax giving rise to such refund or credit), net of all out-of-pocket expenses (including any taxes on a refund or on interest received or credited) which such Lender or Agent certifies that it has reasonably determined to have been incurred in connection with obtaining such refund, credit or other tax benefit; provided, however, that (i) each Credit Party shall repay, upon the request of such Lender or Agent, the amount paid over to such Credit Party (plus penalties, interest or other charges) to such Lender or Agent in the event such Lender or Agent is required to repay such refund or credit to such tax authority, (ii) such Lender or Agent, as the case may be, shall have no obligation to cooperate with respect to any contest (or continue to cooperate with respect to any contest), or to seek or claim any refund, credit or other tax benefit if such Lender or Agent determines that its interest would be adversely affected by so cooperating (or continuing to cooperate) or by seeking or claiming any such refund, credit or other tax benefit and (iii) no Credit Party shall have any right to examine the tax returns or other records of any Lender or Agent or to obtain any information with respect thereto by reason of the provisions of this Section 3.01 or any judgment or determination made by any Lender or Agent pursuant to this Section 3.01.

Section 3.02 Change in Law, Etc. If, on or after the date of this Agreement, the adoption of any applicable Law, or any change in any applicable Law, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Applicable Lending Office) with any request or directive (whether or not having the force of Law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for any Lender (or its Applicable

Lending Office) to make, maintain or fund any of its Eurodollar Loans and, in each such case, the affected Lender shall so notify the Administrative Agent, the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Borrower, whereupon, until each affected Lender notifies the Borrower and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, (i) the obligation of each affected Lender to make Eurodollar Loans, or to convert outstanding Loans into Eurodollar Loans, shall be suspended. Before giving any notice to the Administrative Agent pursuant to this Section 3.02, such Lender shall designate a different Applicable Lending Office if such designation will avoid the need for giving such notice and will not, in the judgment of such Lender, be otherwise disadvantageous to such Lender. If such notice is given, each Eurodollar Loan of such Lender then outstanding shall be converted to a Base Rate Loan either (i) on the last day of the then current Interest Period applicable to such Eurodollar Loan, if such Lender may lawfully continue to maintain and fund such Loan to such day or (ii) immediately, if such Lender shall determine that it may not lawfully continue to maintain and fund such Loan to such day.

Section 3.03 Basis for Determining Interest Rate Inadequate or Unfair. If on or prior to the first day of any Interest Period for any Eurodollar Loan:

(i) the Administrative Agent determines (which determination shall be conclusive) that by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the applicable Eurodollar Rate for such Interest Period; or

(ii) Lenders having 50% or more of the aggregate amount of the Commitments of the relevant Class advise the Administrative Agent that the London Interbank Offered Rate as determined by the Administrative Agent will not adequately and fairly reflect the cost to such Lenders of funding their Eurodollar Loans for such Interest Period;

the Administrative Agent shall forthwith give notice thereof to the Borrower and the relevant Lenders, whereupon, until the Administrative Agent notifies the Borrower that the circumstances giving rise to such suspension no longer exist, (i) the obligations of the Lenders to make Eurodollar Loans, or to continue or convert outstanding Loans as or into Eurodollar Loans, shall be suspended and (ii) each outstanding Eurodollar Loan shall be converted into a Base Rate Loan on the last day of the then current Interest Period applicable thereto. Unless the Borrower notifies the Administrative Agent at least two Business Days before the date of any Eurodollar Borrowing for which a Notice of Borrowing has previously been given that it elects not to borrow on such date, such Borrowing shall instead be made as a Base Rate Borrowing in the same aggregate amount as the requested Borrowing and shall bear interest for each day from and including the first day to but excluding the last day of the Interest Period applicable thereto at the rate applicable to Revolving Base Rate Loans for such day.

Section 3.04 Increased Costs and Reduced Return.

(a) If on or after the date hereof, the adoption of or any change in any applicable Law or in the interpretation or application thereof applicable to any Lender (or its Applicable Lending Office), or compliance by any Lender (or its Applicable Lending Office) with any request or directive (whether or not having the force of Law) from any central bank or other Governmental Authority, in each case made subsequent to the Effective Date (or, if later, the date on which such Lender becomes a Lender):

(i) shall subject such Lender (or its Applicable Lending Office) to any tax of any kind whatsoever with respect to any Letter of Credit, any Eurodollar Loans made by it or any of its Notes or its obligation to make Eurodollar Loans or to participate in Letters of Credit, or

change the basis of taxation of payments to such Lender (or its Applicable Lending Office) in respect thereof (except for (A) Taxes and Other Taxes covered by Section 3.01 (including Taxes imposed solely by reason of any failure of such Lender to comply with its obligations under Section 3.01(d)) and (B) Excluded Taxes);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender (or its Applicable Lending Office) which is not otherwise included in the determination of the Eurodollar Rate hereunder; or

(iii) shall impose on such Lender (or its Applicable Lending Office) any other condition (excluding any tax of any kind whatsoever);

and the result of any of the foregoing is to increase the cost to such Lender (or its Applicable Lending Office) of making, converting into, continuing or maintaining any Eurodollar Loans or issuing or participating in Letters of Credit or to reduce any amount receivable hereunder in respect thereof, then, in any such case, upon notice to the Borrower from such Lender, through the Administrative Agent, in accordance herewith, the Borrower shall be obligated to pay such Lender, within 10 Business Days of its demand, any additional amounts necessary to compensate such Lender on an after-tax basis (after taking into account applicable deductions and credits in respect of the amount indemnified) for such increased cost or reduced amount receivable.

(b) If any Lender shall have determined that the adoption or the becoming effective of, or any change in, or any change by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof in the interpretation or administration of, any applicable Law regarding capital adequacy, or compliance by such Lender, or its parent corporation, with any request or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Lender's (or parent corporation's) capital or assets as a consequence of its commitments or obligations hereunder to a level below that which such Lender, or its parent corporation, could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Lender's (or parent corporation's) policies with respect to capital adequacy), then, upon notice from such Lender to the Borrower, the Borrower shall be obligated to pay to such Lender such additional amount or amounts as will compensate such Lender on an after-tax basis (after taking into account applicable deductions and credits in respect of the amount indemnified) for such reduction; provided, that the Borrower shall not be required to compensate any Lender pursuant to subsection (a) above or this subsection (b) for any additional costs or reductions suffered more than 180 days prior to the date such Lender notifies the Borrower of the circumstances giving rise to such additional costs or reductions and of such Lender's intentions to claim compensation therefor, and provided, further, that, if the Change in Law or in the interpretation or administration thereof giving rise to such additional costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. Each determination by any such Lender of amounts owing under this Section 3.04 shall, absent manifest error, be conclusive and binding on the parties hereto.

(c) A certificate in reasonable detail of each Lender setting forth such amount or amounts as shall be necessary to compensate such Lender or its holding company as specified in subsection (a) or (b) above, as the case may be, shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay each Lender or the Issuing Lender the amount shown as due on any such certificate delivered by it within 10 Business Days after receipt of the same.

(d) Promptly after any Lender becomes aware of any circumstance that will, in its reasonable judgment, result in a request for increased compensation pursuant to this Section 3.04, such Lender shall notify the Borrower thereof. Failure on the part of any Lender so to notify the Borrower or to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital with respect to any period shall not constitute a waiver of such Lender's right to demand compensation with respect to such period or any other period, except as expressly otherwise provided above. The protection of this Section 3.04 shall be available to each Lender regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, guideline or other change or condition which shall have occurred or been imposed.

Section 3.05 Funding Losses. The Borrower shall indemnify each Lender against any loss or expense (but excluding in any event loss of anticipated profit) which such Lender may sustain or incur as a consequence of (i) any failure by the Borrower to fulfill on the date of any Borrowing hereunder the applicable conditions set forth in Article IV, (ii) any failure by the Borrower to borrow or to refinance, convert or continue any Loan hereunder after irrevocable notice of such Borrowing, refinancing, conversion or continuation has been given pursuant to Section 2.02 or 2.07, (iii) any payment, prepayment or conversion of a Eurodollar Loan, whether voluntary or involuntary, pursuant to any other provision of this Agreement or otherwise made on a date other than the last day of the Interest Period applicable thereto, or (iv) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.10(d), including, in each such case, any loss or reasonable expense sustained or incurred or to be sustained or incurred in liquidating or employing deposits from third parties acquired to effect or maintain such Loan or any part thereof as a Eurodollar Loan. Such loss or reasonable expense (other than loss of anticipated profits) shall include an amount equal to the excess, if any, as reasonably determined by such Lender, of (i) its cost of obtaining the funds for the Loan being paid, prepaid, converted, not borrowed or assigned (based on the applicable London Interbank Offered Rate), for the period from the date of such payment, prepayment, conversion, failure to borrow, convert or continue to the last day of the Interest Period for such Loan (or, in the case of a failure to borrow, the Interest Period for such Loan which would have commenced on the date of such failure to borrow, convert or continue) or assignment over (ii) the amount of interest (as reasonably determined by such Lender) that would be realized by such Lender in reemploying the funds so paid, prepaid, converted, not borrowed, converted or continued for such period or Interest Period or assignment, as the case may be. A certificate of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this Section 3.05 shall be delivered to the Borrower and shall be conclusive absent manifest error.

Section 3.06 Base Rate Loans Substituted for Affected Eurodollar Loans. If (i) the obligation of any Lender to make, or to continue or convert outstanding Loans as or to, Eurodollar Loans has been suspended pursuant to Section 3.02 or (ii) any Lender has demanded compensation under Section 3.01 or 3.04 with respect to its Eurodollar Loans, and in any such case the Borrower shall, by at least five Business Days' prior notice to such Lender through the Administrative Agent, have elected that the provisions of this Section 3.06 shall apply to such Lender, then, unless and until such Lender notifies the Borrower that the circumstances giving rise to such suspension or demand for compensation no longer exist, all Loans which would otherwise be made by such Lender as (or continued as or converted to) Eurodollar Loans shall instead be Base Rate Loans (on which interest and principal shall be payable contemporaneously with the related Eurodollar Loans of the other Lenders). If such Lender notifies the Borrower that the circumstances giving rise to such suspension or demand for compensation no longer exist, the principal amount of each such Base Rate Loan shall be converted into a Eurodollar Loan on the first day of the next succeeding Interest Period applicable to the related Eurodollar Loans of the other Lenders.

**ARTICLE IV
CONDITIONS**

Section 4.01 Conditions to Closing. The obligation of each lender under the Existing Credit Agreement to make an Existing Term B Loan, a Revolving Loan or issue a Letter of Credit on the Closing Date was subject to the satisfaction of the following conditions (and each reference in this Section 4.01 to “this Agreement” shall mean the Existing Credit Agreement):

(a) *Executed Senior Finance Documents.* Receipt by the Administrative Agent of duly executed copies of: (i) this Agreement; (ii) the notes; (iii) the Guaranty; (iv) the Collateral Documents and (v) all other Senior Finance Documents, each in form and substance satisfactory to the Lead Arrangers and the Required Lenders in their sole discretion.

(b) *Legal Matters.* All legal matters incident to this Agreement and the borrowings hereunder shall be reasonably satisfactory to the Lead Arrangers and to Fried, Frank, Harris, Shriver & Jacobson LLP, counsel for the Lead Arrangers.

(c) *Organizational Documents.* After giving effect to the transactions contemplated by the Transaction Documents, the ownership, capital, corporate, organizational and legal structure of each Credit Party shall be reasonably satisfactory to the Lead Arrangers, and the Administrative Agent shall have received: (i) a copy of the certificate or articles of incorporation or other organizational documents, as applicable, including all amendments thereto, of each Credit Party, certified as of a recent date by the Secretary of State or other applicable authority of its respective jurisdiction of organization; (ii) a certificate as to the good standing of each Credit Party, as of a recent date, from the Secretary of State or other applicable authority of its respective jurisdiction of organization and, to the extent reasonably available, from each other state in which such Credit Party is qualified or is required to be qualified to do business, together in each case, to the extent generally available, with a certificate or other evidence of good standing as to payment of any applicable franchise or similar taxes from the appropriate taxing authority of each such jurisdiction; (iii) a certificate of the Secretary or Assistant Secretary of each Credit Party dated the Closing Date substantially in the form of Exhibit L hereto; (iv) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to clause (iii) above; and (v) such other corporate or other constitutive or organizational documents as the Lead Arrangers or Fried, Frank, Harris, Shriver & Jacobson LLP, counsel for the Lead Arrangers, may reasonably request.

(d) *Officer's Certificates.* The Administrative Agent shall have received (i) a certificate, dated the Closing Date and signed by a Responsible Officer of each of Holdings, Intermediate Holdings and the Borrower, confirming compliance with the conditions precedent set forth in paragraphs (b) and (c) of Section 4.02 and (ii) a certificate, dated the Closing Date and signed by a Responsible Officer of each other Credit Party, confirming compliance with the condition precedent set forth in paragraph (b) of Section 4.02.

(e) *Opinions of Counsel.* On the Closing Date, the Administrative Agent shall have received:

(i) a written opinion of Kirkland & Ellis LLP, special counsel to the Credit Parties, addressed to the Agents and each Lender, dated the Closing Date, substantially in the form of Exhibit D-1 hereto;

(ii) from Kirkland & Ellis LLP, special counsel to the Credit Parties, or special local counsel to the Borrower and the other Credit Parties (which counsel shall be

reasonably satisfactory to the Lead Arrangers) for each State in which any Credit Party is located (within the meaning of Section 9-301 of the Uniform Commercial Code as in effect in the State of New York), an opinion addressed to the Agents and each Lender, dated the Closing Date, substantially in the form of Exhibit D-2 hereto and covering such additional matters incident to the transactions contemplated hereby as the Lead Arrangers or the Required Lenders may reasonably request;

(iii) from special local counsel to the Borrower and the other Credit Parties (which counsel shall be reasonably satisfactory to the Lead Arrangers) for each jurisdiction in which a Mortgaged Property is located, an opinion addressed to the Agents and each Lender, dated the Closing Date, substantially in the form of Exhibit D-3 hereto, with respect to the enforceability of the form of Mortgage and sufficiency of the form of UCC-1 financing statements or similar notices to be recorded or filed in such jurisdiction, if applicable, and such other matters as the Lead Arrangers or the Required Lenders may reasonably request;

(iv) from special counsel to the Target in respect of the Acquisition, copies of each opinion delivered by them in connection with the Acquisition, accompanied in each case by a letter from such counsel stating that the Agents and the Lenders are entitled to rely on such opinions as if they were addressed to the Agents and the Lenders; and

(v) from Kirkland & Ellis LLP, special counsel to the Borrower, copies of the opinions delivered by them under the purchase agreement for the Subordinated Debentures, accompanied in each case by a letter from such special counsel stating that the Agents and the Lenders are entitled to rely on such opinions as if they were addressed to the Agents and the Lenders.

(f) Capitalization. On or prior to the Closing Date, (i) AcquisitionCo shall have received gross cash proceeds of not less than \$95,000,000 (less the amount of Rollover Stock (as defined in the Acquisition Agreement)) in connection with the purchase by the Investor Group of common and preferred equity of AcquisitionCo (the "Investor Equity Issuance"), (ii) Intermediate Holdings shall have received gross cash proceeds of not less than \$60,000,000 in connection with the Investor Preferred Equity Issuance (less the amount of Rollover Stock as defined in the Acquisition Agreement), (iii) without the express written consent of the Lead Arrangers, no common or preferred stock of Holdings, Intermediate Holdings or the Borrower shall be subject to any redemption, put, call, repurchase or similar provisions prior to the Maturity Date with respect to any Loan (except in connection with the Management Put Rights and preemptive rights), (iv) the proceeds of the Investor Equity Issuance and the Investor Preferred Equity Issuance, when aggregated with the Subordinated Debentures and the Term B Loan incurred by the Borrower on the Closing Date, shall be used, and shall be sufficient, to pay the purchase price required to be paid on the Closing Date to consummate the Acquisition and to pay all fees and expenses owing in connection therewith on the Closing Date, and (v) the Administrative Agent shall have received true and correct copies, certified as such by an appropriate officer of Holdings, of all subscription agreements, registration rights agreements, shareholder agreements and other documents and instruments delivered in connection therewith (collectively, the "Capitalization Documents"), each of which shall be in full force and effect and shall be in form and substance reasonably satisfactory to the Lead Arrangers.

(g) Issuance of Subordinated Debentures. On or prior to the Closing Date, the Borrower shall have (A) entered into the Subordinated Debentures Documents on terms that are reasonably satisfactory to the Lead Arrangers, (B) executed and delivered the Subordinated Debentures, (C) delivered to the Administrative Agent true and correct copies, certified as such by an appropriate officer of the Borrower, of the Subordinated Debentures Indenture, each of the Subordinated Debentures

as originally executed and delivered and each of the other Subordinated Debentures Documents (on terms that are reasonably satisfactory to the Lead Arrangers), each of which shall be in full force and effect, and (D) utilized the full amount of such cash proceeds to make payments owing in connection with the Transaction prior to or concurrently with the utilization of any proceeds of the Loans for such purpose.

(h) Consummation of the Acquisition. On or prior to the Closing Date, there shall have been delivered to the Administrative Agent true and correct copies of all Acquisition Documents, certified as such by an appropriate officer of the Borrower, and all terms and conditions of the Acquisition Documents shall be in form and substance reasonably satisfactory to the Lead Arrangers. The Acquisition, including all of the terms and conditions thereof and including, without limitation, the Merger, shall have been duly approved by the board of directors and (if required by applicable law) the shareholders of each of the Borrower (prior to the consummation of the Merger), the Target and each other Group Company party thereto, and all Acquisition Documents shall have been duly executed and delivered by the parties thereto and shall be in full force and effect. The representations and warranties set forth in the Acquisition Documents shall be true and correct in all material respects as if made on and as of the Closing Date (except to the extent such representations and warranties expressly refer to a prior date, in which case such representations and warranties shall have been true and correct as of such prior date), and each of the parties to the Acquisition Documents shall have complied in all material respects with all covenants set forth in the Acquisition Documents to be complied with by it on or prior to the Closing Date (without giving effect to any modification, amendment, supplement or waiver of any of the material terms thereof unless consented to by the Lead Arrangers, which consent shall not be unreasonably withheld or delayed). Each of the material conditions precedent to the Group Companies' obligations to consummate the Acquisition as set forth in the Acquisition Documents shall have been satisfied to the reasonable satisfaction of the Lead Arrangers or waived with the consent of the Lead Arrangers, and, on or prior to the Closing Date and prior to the borrowing of the initial Loans, the Acquisition shall have been consummated for aggregate consideration not in excess of \$510,000,000 (excluding purchase price adjustments) (excluding related transaction fees and expenses not exceeding \$20,000,000) in accordance with all applicable laws and the Acquisition Documents (without giving effect to any material amendment or modification thereof or material waiver with respect thereto including, but not limited to, any material modification, amendment, supplement or waiver relating to any disclosure schedule or exhibit, unless such modification, amendment, supplement or waiver could not reasonably be expected to be materially adverse in any respect to the Lenders or unless consented to by the Lead Arrangers). On the Closing Date, the certificate of merger with respect to the Merger shall have been filed with the appropriate Governmental Authority having primary jurisdiction over affairs of corporations in Delaware.

(i) Refinancing of Certain Existing Debt; Other Debt. On the Closing Date, the commitments under all Refinanced Agreements shall have been terminated, all loans outstanding thereunder shall have been repaid in full (other than contingent indemnification obligations not due and payable), together with accrued interest thereon (including, without limitation, any prepayment premium), all letters of credit issued thereunder shall have been terminated or backstopped through the issuance of Letters of Credit hereunder or shall have become Letters of Credit hereunder and all other amounts owing pursuant to each Refinanced Agreement shall have been repaid in full, and the Administrative Agent shall have received evidence in form, scope and substance reasonably satisfactory to the Lead Arrangers that the matters set forth in this subsection (i) have been satisfied at such time. In addition, on the Closing Date, the creditors under each Refinanced Agreement shall have terminated and released all applicable Liens on the capital stock of and assets owned by the Borrower and its Subsidiaries (including, without limitation, all capital stock and assets of Holdings and its Subsidiaries), and the Lead Arrangers shall have received all such releases as may have been requested by the Lead Arrangers, which releases shall be in form and substance satisfactory to the Lead Arrangers. After the consummation of the transactions contemplated by the Acquisition Agreement on the Closing Date, the Group Companies shall have no

material liabilities (actual or contingent) required to be disclosed in its financial statements or Preferred Stock, except (i) as disclosed in the most recent interim balance sheet included in the financial statements delivered pursuant to subsection (q) below or the footnotes thereto, (ii) for current obligations and contractual obligations incurred in the ordinary course of business, (iii) Debt under the Senior Finance Documents and the Subordinated Debentures, (iv) the Junior Debentures and the preferred stock issued in connection with the Investor Preferred Equity Issuance and (v) contingent indemnification obligations not due and payable.

(j) *Perfection of Personal Property Security Interests and Pledges: Search Reports.* On or prior to the Closing Date, the Collateral Agent shall have received or have completed or arrangements satisfactory to the Collateral Agent shall have been provided for:

(i) a Perfection Certificate from each Credit Party;

(ii) appropriate financing statements (Form UCC-1 or such other financing statements or similar notices as shall be required by local law) authenticated and authorized for filing under the Uniform Commercial Code or other applicable local law of each jurisdiction in which the filing of a financing statement or giving of notice may be required, or reasonably requested by the Collateral Agent, to perfect the security interests created by the Collateral Documents;

(iii) copies of reports from CT Corporation or another independent search service reasonably satisfactory to the Collateral Agent listing all effective financing statements, notices of tax, PBGC or judgment liens or similar notices that name the Borrower or any other Credit Party, as such (under its present name and any previous name and, if requested by the Collateral Agent, under any trade names), as debtor or seller that are filed in the jurisdictions referred to in clause (ii) above or in any other jurisdiction having files which must be searched in order to determine fully the existence of Uniform Commercial Code security interests, notices of the filing of federal tax Liens (filed pursuant to Section 6323 of the Code), Liens of the PBGC (filed pursuant to Section 4068 of ERISA) or judgment Liens on any Collateral, together with copies of such financing statements, notices of tax, PBGC or judgment Liens or similar notices (none of which shall cover the Collateral except to the extent evidencing Permitted Liens or for which the Collateral Agent shall have received termination statements (Form UCC-3 or such other termination statements as shall be required by local law) authenticated and authorized for filing);

(iv) searches of ownership of intellectual property in the appropriate governmental offices and such patent, trademark and/or copyright filings as may be requested by the Collateral Agent to the extent necessary or reasonably advisable to perfect the Collateral Agent's security interest in intellectual property Collateral;

(v) all of the Pledged Collateral, which Pledged Collateral shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, with signatures appropriately guaranteed, accompanied in each case by any required transfer tax stamps, all in form and substance reasonably satisfactory to the Collateral Agent; and

(vi) evidence of the completion of all other filings and recordings of or with respect to the Collateral Documents and of all other actions as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests intended to be created by the Collateral Documents.

(k) Real Property Collateral. The Collateral Agent shall have received (in form and substance satisfactory to the Lead Arrangers):

(i) fully executed and notarized mortgages, deeds of trust or deeds to secure debt (each a "Mortgage" and, collectively, the "Mortgages") encumbering the fee interest of the Credit Parties in each real property asset owned by a Credit Party set forth on Schedule 4.01(k)(i) (each an "Owned Mortgaged Property" and collectively, the "Owned Mortgaged Properties") and the leasehold interest of the Credit Parties in each real property asset leased by a Credit Party set forth on Schedule 4.01(k)(i) (each a "Leased Mortgaged Property" and, collectively, the "Leased Mortgaged Properties" and, together with the Owned Mortgaged Property, each a "Mortgaged Property" and, collectively, the "Mortgaged Properties"), together with such UCC-1 financing statements or similar notices as the Collateral Agent shall reasonably deem appropriate with respect to each such Mortgaged Property;

(ii) the Borrower shall have obtained a fully executed Landlord Consent and Estoppel with respect to each Leased Mortgaged Property, together with evidence that such Leased Mortgaged Property is a Recorded Leasehold Interest;

(iii) ALTA or other appropriate form mortgagee title insurance policies (the "Mortgage Policies") issued by Chicago Title Insurance Company (the "Title Insurance Company"), in an amount reasonably satisfactory to the Lead Arrangers with respect to each Mortgaged Property, which amount shall not exceed the fair market value for each such Mortgaged Property, assuring the Lead Arrangers that the applicable Mortgages create valid and enforceable first priority mortgage liens on the respective Mortgaged Property, free and clear of all defects and encumbrances except Permitted Encumbrances, which Mortgage Policies shall contain such endorsements as shall be reasonably satisfactory to the Lead Arrangers and for any other matters that the Lead Arrangers may request, and providing affirmative insurance and such reinsurance as the Lead Arrangers may request, all of the foregoing in form and substance reasonably satisfactory to the Lead Arrangers;

(iv) if requested by the Lead Arrangers, copies of all recorded documents listed as exceptions to title or otherwise referred to in the Mortgage Policies; and

(v) such evidence satisfactory to the Lead Arrangers as the Lead Arrangers reasonably may request to the effect that each of the Mortgaged Properties, and the uses of the Mortgaged Properties, are in compliance in all material respects with all applicable Laws.

(l) Evidence of Insurance. Receipt by the Collateral Agent of copies of insurance policies or certificates of insurance of the Credit Parties and their Subsidiaries evidencing liability and casualty insurance meeting the requirements set forth in the Senior Finance Documents, including, but not limited to, naming the Collateral Agent as additional insured and loss payee on behalf of the Lenders.

(m) Consents and Approvals. On the Closing Date, all governmental (domestic or foreign), regulatory and third party approvals (including, without limitation, with respect to real property leases and license agreements relating to intellectual property) required and material in connection with the transactions contemplated by the Acquisition Agreement and the other Transaction Documents and otherwise referred to herein or therein shall have been obtained and remain in full force and effect, and all applicable waiting periods (including any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976) and appeal periods shall have expired, in each case without any action being taken or threatened by any competent authority which has or could have a reasonable likelihood of restraining, preventing or imposing materially burdensome conditions on such transactions or impose, in

the sole judgment of the Lead Arrangers, materially burdensome conditions or qualifications upon the consummation of such transactions.

(n) Litigation; Judgments. On the Closing Date, there shall be no actions, suits, proceedings, counterclaims or investigations pending or overtly threatened (i) challenging the consummation of any portion of the Transaction or which in the judgment of the Lead Arrangers or the Required Lenders could restrain, prevent or impose burdensome conditions on the Transaction, in the aggregate, or any other transaction contemplated hereunder, (ii) seeking to prohibit the ownership or operation by Holdings, the Borrower, or any of their respective Subsidiaries of all or any material portion of any of their respective businesses or assets or (iii) seeking to obtain, or which could result or has resulted in the entry of, any judgment, order or injunction that (A) would restrain, prohibit or impose adverse or burdensome conditions on the ability of the Lenders to make the Loans, (B) in the judgment of the Lead Arrangers and the Required Lenders could reasonably be expected to result in a Material Adverse Effect with respect to Holdings, the Borrower and their Subsidiaries taken as a whole (after giving effect to the Transaction) or (C) could purport to affect the legality, validity or enforceability of any Senior Finance Document or could have a material adverse effect on the ability of any Credit Party to fully and timely perform their payment and security obligations under the Senior Finance Documents or the rights and remedies of the Lenders. Additionally, there shall not exist any judgment, order, injunction or other restraint issued or filed or a hearing seeking injunctive relief or other restraint pending or notified prohibiting or imposing materially adverse conditions upon the consummation of the transactions contemplated by the Transaction Documents and otherwise referred to herein or therein.

(o) Solvency Certificate. On or prior to the Closing Date, the Borrower shall have delivered or caused to be delivered to the Administrative Agent a solvency certificate from the chief financial or chief accounting officer of the Borrower, substantially in the form of Exhibit K hereto and otherwise in form and substance reasonably satisfactory to the Lead Arrangers, setting forth the conclusions that, after giving effect to the Acquisition and the consummation of all financings contemplated herein, Holdings and its Subsidiaries (on a consolidated basis) and the Borrower and its Subsidiaries (on a consolidated basis) are solvent.

(p) Environmental Reports. On or prior to the Closing Date, if requested by the Lead Arrangers in their reasonable discretion, the Borrower shall have delivered or caused to be delivered to the Administrative Agent the environmental assessment reports with respect to the Tempe, AZ and Goodlettsville, TN facilities) in scope, form and substance and prepared by Gaiatech, Incorporated or another environmental consultant, in each case satisfactory to the Lead Arrangers, together with reliance letters with respect thereto as reasonably requested by the Lead Arrangers.

(q) Financial Information. The Administrative Agent and the Lead Arrangers shall each be reasonably satisfied that the financial statements referred to in Section 5.05, including the pro-forma balance sheet referenced to in Section 5.05(b), are not materially inconsistent with the information, projections, sources and uses of funds or financial model delivered to the Lead Arrangers prior to the Closing Date.

(r) Material Adverse Effect. There shall not have occurred or become known any condition, fact, event or development that has resulted or could reasonably be expected to result in a material adverse change in the business, assets, operations, condition (financial or otherwise), liabilities (contingent or otherwise) or prospects of Holdings and its Subsidiaries (including the Borrower and its Subsidiaries), taken as a whole (both before and after giving effect to the Transaction) since December 31, 2003.

(s) Management Employment Agreements and Arrangements. On or prior to the Closing Date, there shall have been delivered to the Administrative Agent copies of management employment agreements or arrangements, including management equity incentive agreements, and all terms and conditions of such management employment agreements or arrangements shall be, as of the Closing Date, in form and substance reasonably satisfactory to the Lead Arrangers.

(t) Minimum EBITDA; Maximum Pro-Forma Leverage Ratio. The Lead Arrangers shall have received reasonably satisfactory evidence (including satisfactory supporting schedules and other data) that: (i) pro-forma EBITDA of Holdings and its subsidiaries after giving effect to the Transactions for the trailing four quarters ended December 31, 2003, calculated in a manner reasonably acceptable to the Lead Arrangers was not less than \$60.0 million and (ii) the ratio of pro forma consolidated debt (not including undrawn letters of credit) to pro forma EBITDA of Holdings, Borrower and its subsidiaries after giving effect to the Transaction for the trailing four quarters ended December 31, 2003, calculated in a manner reasonably acceptable to the Lead Arrangers, was not greater than 6.22x (based on an average outstanding revolver balance necessary to meet average working capital needs over a 12 month period). At the Closing Date, the maximum aggregate outstandings under all Letters of Credit shall not exceed \$4,648,431.

(u) OFAC/Anti-Terrorism Compliance Certificate. The Administrative Agent shall have received a certificate substantially in the form of Exhibit J hereto, dated the Closing Date and signed by a Responsible Officer of Holdings, certifying as to the matters set forth in Exhibit J.

(v) Payment of Fees. All costs, fees and expenses due to the Lead Arrangers, the Agents and the Lenders on or before the Closing Date shall have been paid to the extent invoiced to the Borrower (together with reasonable detail therefor).

(w) Counsel Fees. The Lead Arrangers shall have received full payment from the Borrower of the fees and expenses of Fried, Frank, Harris, Shriver & Jacobson LLP described in Section 10.04 which are billed through the Closing Date.

All corporate and legal proceedings and instruments and agreements relating to the transactions contemplated by this Agreement and the other Transaction Documents or in any other document delivered in connection herewith or therewith shall be reasonably satisfactory in form and substance to the Lead Arrangers and their counsel, and the Lead Arrangers shall have received all information and copies of all documents and papers, including records of corporate proceedings, governmental approvals, good standing certificates and bring-down facsimiles, if any, which the Lead Arrangers reasonably may have requested in connection therewith, such documents and papers where appropriate to be certified by proper corporate or Governmental Authorities. The documents referred to in this Section 4.01 shall be delivered to the Administrative Agent or Lead Arrangers, as applicable, no later than the Closing Date. The certificates and opinions referred to in this Section 4.01 shall be dated the Closing Date.

The requirement that any document, agreement, certificate or other writing be reasonably satisfactory to the Required Lenders shall be deemed to be satisfied if (i) such document, agreement, certificate or other writing was delivered to the Lenders not less than two Business Days prior to the Closing Date, (ii) such document, agreement, certificate or other writing is satisfactory to the Lead Arrangers and (iii) Lenders holding at least 50% of the Commitments have not objected in writing to such document, agreement, certificate or other writing to the Lead Arrangers prior to the Closing Date.

Section 4.02 Conditions to All Credit Extensions. The obligation of any Lender to make a Loan on the occasion of any Borrowing and the obligation of any Issuing Lender to issue (or renew or extend the term of) any Letter of Credit is subject to the satisfaction of the following conditions:

(a) *Notice.* The Borrower shall have delivered (i) in the case of any Revolving Loan, to the Administrative Agent, an appropriate Notice of Borrowing, duly executed and completed, by the time specified in, and otherwise as permitted by, Section 2.02 and (ii) in the case of any Letter of Credit, to the Issuing Lender, an appropriate Letter of Credit Request duly executed and completed in accordance with the provisions of Section 2.05.

(b) *Representations and Warranties.* The representations and warranties made by the Credit Parties in any Senior Finance Document are true and correct in all material respects at and as if made as of such date except to the extent they expressly relate to an earlier date.

(c) *No Default.* No Default or Event of Default shall exist or be continuing either prior to or after giving effect thereto.

(d) *Availability.* Immediately after giving effect to the making of a Loan (and the application of the proceeds thereof) or to the issuance of a Letter of Credit, as the case may be, (i) the sum of the Revolving Loans outstanding plus the amount of all LC Obligations outstanding plus all Swingline Loans outstanding shall not exceed the Revolving Committed Amount, (ii) the amount of all LC Obligations outstanding shall not exceed the LC Committed Amount and (iii) the sum of all Swingline Loans outstanding shall not exceed the Swingline Committed Amount.

(e) *Term Borrowings.* In the case of the initial Revolving Borrowing after the Effective Date, the fact that prior to, or concurrently with, such Revolving Borrowing, the Borrower has made an Additional Term B Borrowing in the full amount of the Additional Term B Commitments.

The delivery of each Notice of Borrowing, Swingline Loan Request and each request for a Letter of Credit shall constitute a representation and warranty by the Credit Parties of the correctness of the matters specified in subsections (b), (c) and (d) above.

Section 4.03 Effective Date. The effectiveness of the amendments set forth herein and the obligation of each Incremental Term B Lender to make an Additional Term B Loan on the Effective Date are subject to the satisfaction of:

(a) The Administrative Agent shall have received copies of executed signature pages to (i) this Agreement from (x) each Credit Party and (y) each Incremental Term B Lender (ii) the Lender Consent by the Lenders holding 100% of the Loans and Revolving Committed Amount under the Existing Credit Agreement and (iii) the Acknowledgment and Agreement from each of the Guarantors.

(b) The Borrower shall have paid all fees, costs, and expenses owing to the Administrative Agent and its counsel invoiced to the Borrower on or before the Effective Date and reimbursable by the Borrower under the terms of the Amended and Restated Fee Letter and the Finance Documents. The Administrative Agent shall have received, for its own account or for the account of each Lender (as defined in the Existing Credit Agreement) all interest and fees accrued under the Existing Credit Agreement through the Effective Date.

(c) The Collateral Agent shall have received evidence that each Credit Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including, without limitation, UCC financing

statements, date-down title policies with respect to Mortgaged Properties, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by the Collateral Agent.

(d) Each of the Credit Parties shall have delivered to the Administrative Agent an originally executed (i) Effective Date Certificate, together with all attachments thereto, and certificate of the Secretary of such Credit Party, together with the attachments thereto, to the extent as was required under Section 4.01(c).

(e) On or prior to the Effective Date, the Borrower shall have delivered or caused to be delivered to the Administrative Agent a solvency certificate from the chief financial or chief accounting officer of the Borrower, substantially in the form of Exhibit K hereto and otherwise in form and substance reasonably satisfactory to the Administrative Agent, setting forth the conclusions that, after giving effect to the consummation of all transactions contemplated by this Agreement, Holdings and its Subsidiaries (on a consolidated basis) and the Borrower and its Subsidiaries (on a consolidated basis) are solvent.

(f) [Reserved]

(g) On the Effective Date, the Administrative Agent shall have received (i) a written opinion of Kirkland & Ellis, LLP, special counsel to the Credit Parties, (ii) a written opinion of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., special Tennessee local counsel to the Credit Parties, (iii) a written opinion of Porter Wright Morris & Arthur LLP, special Ohio local counsel to the Credit Parties and (iv) a written opinion of Ellis & Baker, P.C., special Arizona local counsel to the Credit Parties, each in form and substance reasonably satisfactory to the Administrative Agent.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Each of Holdings, Intermediate Holdings and the Borrower represents and warrants that:

Section 5.01 Organization and Good Standing. Each of the Group Companies is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its formation, has all corporate, partnership or limited liability company powers and all material governmental licenses, franchises, permits, certificates, authorizations, qualifications, accreditations, easements, rights of way and other rights, consents and approvals required to own its property and carry on its business as now conducted and is duly qualified as a foreign corporation, licensed and in good standing in each jurisdiction where qualification or licensing is required by the nature of its business or the character and location of its property, business or customers, except to the extent the failure to so qualify or be licensed, as the case may be, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.02 Power; Authorization; Enforceable Obligations. Each of the Credit Parties has the corporate, partnership, limited liability company or other necessary power and authority, and the legal right, to execute, deliver and perform the Transaction Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder, and has taken all necessary corporate, partnership or limited liability action to authorize the borrowings and other extensions of credit on the terms and conditions of this Agreement and to authorize the execution, delivery and performance of the Transaction Documents to which it is a party. No consent or authorization of, filing with, notice to or other similar act by or in respect of, any Governmental Authority or any other Person is required to be

obtained or made by or on behalf of any Credit Party in connection with the borrowings or other extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of the Transaction Documents, except for (i) consents, authorizations, notices and filings disclosed in Schedule 5.02, all of which have been obtained or made, and (ii) filings to perfect the Liens created by the Collateral Documents. This Agreement has been, and each other Transaction Document to which Holdings or any of its Subsidiaries is a party will be, duly executed and delivered on behalf of such Person. This Agreement constitutes, and each other Transaction Document to which any Credit Party or Holdings is a party when executed and delivered will constitute, a legal, valid and binding obligation of each Credit Party thereto and, to the knowledge of Holdings and the Borrower enforceable against each such Person in accordance with its terms, except (i) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and (ii) that rights of acceleration and the availability of equitable remedies may be limited by equitable principles of general applicability (regardless of whether enforcement is sought by proceedings in equity or at law).

Section 5.03 No Conflicts. Neither the execution and delivery by any Credit Party of the Transaction Documents to which it is a party, nor the consummation of the transactions contemplated therein, nor performance of and compliance with the terms and provisions thereof by such Person, nor the exercise of remedies by the Agents and the Lenders under the Senior Finance Documents, will (i) violate or conflict with any provision of the articles or certificate of incorporation, bylaws, partnership agreement, operating agreement or other organizational or governing documents of such Person, (ii) violate, contravene or conflict with any Law applicable to it or its properties, (iii) violate, contravene or conflict with contractual provisions of, cause an event of default under, or give rise to material increased, additional, accelerated or guaranteed, rights of any Person under, any indenture, loan agreement, mortgage, deed of trust or other instrument, material contract or material lease to which it is a party or by which it may be bound or (iv) result in or require the creation of any Lien (other than the Lien of the Collateral Documents) upon or with respect to its properties, except in the case of clause (iii) for such violations as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.04 No Default. Except as disclosed on Schedule 5.04, none of the Group Companies is in default in any respect under (i) any loan agreement, indenture, mortgage, security agreement or other agreement relating to Debt or any other contract, lease, agreement or obligation to which it is a party or by which any of its properties is bound which default could reasonably be expected to have a Material Adverse Effect, (ii) the Subordinated Debentures Indenture or (iii) the Junior Debentures Indenture. No Default or Event of Default has occurred or exists.

Section 5.05 Financial Condition.

(a) Audited Financial Statements. The consolidated balance sheets of Holdings and its Consolidated Subsidiaries as of December 31, 2003, December 31, 2004 and December 31, 2005 and the related consolidated and consolidating statements of income and cash flows for the respective fiscal years then ended, reported on by PricewaterhouseCoopers LLP, copies of each of which have been delivered to each of the Lenders, fairly present in all material respects, in accordance with GAAP (except as disclosed therein), the consolidated financial position of Holdings and its Consolidated Subsidiaries as of each such date and their consolidated results of operations and cash flows for such fiscal year.

(b) Pro-Forma Financial Statements. The consolidated balance sheet of Holdings and its Consolidated Subsidiaries as of the end of the most recent fiscal quarter prior to the Closing Date for which financial information is available, prepared on a pro-forma basis in accordance with Regulation S-X giving effect to the consummation of the Transactions, has heretofore been furnished to each Lender

as part of the Pre-Commitment Information. Such pro-forma balance sheet has been prepared in good faith by the Borrower, based on the assumptions used to prepare the pro-forma financial information contained in the Pre-Commitment Information (which assumptions are believed by the Borrower on the date hereof and on the Closing Date to be reasonable and fair in light of current conditions and facts known to the Borrower), is based on the best information available to the Borrower as of the date of delivery thereof, accurately reflects all material adjustments required to be made to give effect to the Transactions and presents fairly on a pro-forma basis the estimated consolidated financial position of Holdings and its Consolidated Subsidiaries as of December 31, 2003, assuming that the Transactions had actually occurred on that date. None of Holdings or any of its Subsidiaries has any reason to believe that such pro-forma balance sheet is misleading in any material respect in light of the circumstances existing at the time of the preparation thereof.

(c) *Projections.* The projections prepared as part of, and included in, the Pre-Commitment Information (which include projected balance sheets, income and cash flow statements on a quarterly basis for the period from the Closing Date through December 31, 2008 and on an annual basis for each of the following three fiscal years) have been prepared on a basis consistent with the financial statements referred to in subsection (a) above and are based on good faith estimates and assumptions believed by management of the Borrower to be reasonable and fair in light of current conditions and facts known to the Borrower at the time delivered. On the Closing Date, such management believes that such projections are reasonable and attainable, it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts or guaranties of future performance, that actual results during the period or periods covered by such projections may differ from the projected results and that such differences may be material and that the Credit Parties make no representation that such projections will be in fact be realized. There is no fact known to Holdings or the Borrower or any of their Subsidiaries which could reasonably be expected to have a Material Adverse Effect which has not been disclosed herein or in the Pre-Commitment Information.

(d) *Post-Closing Financial Statements.* The financial statements delivered to the Lenders pursuant to Section 6.01(a) and (b), if any, (i) have been prepared in accordance with GAAP (except as may otherwise be permitted under Section 6.01(a) and (b)) and (ii) present fairly in all material respects (on the basis disclosed in the footnotes to such financial statements, if any) the consolidated and consolidating financial condition, results of operations and cash flows of Holdings and its Consolidated Subsidiaries as of the respective dates thereof and for the respective periods covered thereby.

(e) *No Undisclosed Liabilities.* Except as disclosed on Schedule 5.05 hereto or as fully reflected in the financial statements described in subsection (a) and (b) above and the Debt incurred under this Agreement, the Subordinated Debentures Documents and the Junior Debentures Documents, (i) there were as of the Effective Date (and after giving effect to any Loans made and Letters of Credit issued on such date), no liabilities or obligations (excluding current obligations and contractual obligations incurred in the ordinary course of business) with respect to any Group Company of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether or not due and including obligations or liabilities for taxes, long-term leases and unusual forward or other long-term commitments), and (ii) neither Holdings nor the Borrower knows of any basis for the assertion against any Group Company of any such liability or obligation in each case which, either individually or in the aggregate, are or could reasonably be expected to have, a Material Adverse Effect.

(f) *Sarbanes-Oxley Act Compliance.* To the extent applicable to each Group Company subject thereto, each required form, report and document containing financial statements that has been filed with or submitted to the United States Securities and Exchange Commission since July 31, 2002, was accompanied by the certifications required to be filed or submitted by the chief executive officer and chief financial officer of any Group Company pursuant to the Sarbanes-Oxley Act of 2002

(the “Sarbanes-Oxley Act”), and at the time of filing or submission of each such certification, such certification was true and accurate and complied in all material respects with the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect. No Group Company nor, to the knowledge of Holdings or the Borrower, any director, senior officer, employee, auditor, accountant or authorized representative of any Group Company has received or otherwise had or obtained knowledge of any complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of any Group Company or their respective internal accounting controls, including any complaint, allegation, assertion or claim that any Group Company has engaged in questionable accounting or auditing practices, in each case which if determined to be valid could reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 5.05, to the knowledge of Holdings and the Borrower, no attorney representing any Group Company, whether or not employed by any Group Company, has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by any Group Company or any of its officers, directors, employees or agents to the board of directors of any Group Company or any committee thereof or to any director or officer of any Group Company, in each case which if determined to have occurred could reasonably be expected to have a Material Adverse Effect.

Section 5.06 No Material Change. Since December 31, 2005 there has been no Material Adverse Effect, and no event or development has occurred which could reasonably be expected to result in a Material Adverse Effect.

Section 5.07 Title to Properties; Possession Under Leases. Each Group Company has good insurable and legal fee title to (in the case of owned Real Property), or valid leasehold interests in (in the case of Leaseholds), all its material properties and assets, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted. All such material properties and assets are free and clear of Liens other than Permitted Liens. Each Group Company has complied with all obligations under all leases to which it is a party, other than leases that, individually or in the aggregate, are not material to the Group Companies, taken as a whole, and the violation of which will not result in a Material Adverse Effect, and all such leases are in full force and effect, other than leases that, individually or in the aggregate, are not material to the Group Companies, taken as a whole, and in respect of which the failure to be in full force and effect will not result in a Material Adverse Effect. Each Group Company enjoys peaceful and undisturbed possession under all such leases with respect to which it is the lessee, other than leases that, individually or in the aggregate, are not material to the Group Companies, taken as a whole, and in respect of which the failure to enjoy peaceful and undisturbed possession will not result in a Material Adverse Effect.

Section 5.08 Litigation. Except as disclosed in Schedule 5.08, there are no actions, suits, investigations or legal, equitable, arbitration or administrative proceedings pending or, to the knowledge of any Credit Party, threatened against or affecting any Group Company in which there is a reasonable possibility of an adverse decision that (i) involve any Senior Finance Document or any of the Transactions or (ii) if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.09 Taxes. Except as disclosed in Schedule 5.09 or otherwise permitted by Section 6.05, each Group Company has filed, or caused to be filed, all federal and all material state, local and foreign tax returns required to be filed and paid (i) all amounts of taxes shown thereon to be due (including interest and penalties) and (ii) all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangible taxes) owing by it. No Credit Party knows of any pending investigation of such party by any taxing authority or proposed tax assessments against any Group Company.

Section 5.10 Compliance with Law. Except as disclosed in Schedule 5.10, each Group Company is in compliance with all requirements of Law (including Environmental Laws) applicable to it or to its properties, except for any such failure to comply which could not reasonably be expected to cause a Material Adverse Effect. Except as disclosed in Schedule 5.10, to the knowledge of the Credit Parties, none of the Group Companies or any of their respective material properties or assets is subject to or in default with respect to any judgment, writ, injunction, decree or order of any court or other Governmental Authority which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Except as disclosed in Schedule 5.10, none of the Group Companies has received any written communication from any Governmental Authority that alleges that any of the Group Companies is not in compliance in any material respect with any Law, except for allegations that have been satisfactorily resolved and are no longer outstanding or which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 5.11 Employee Benefit Arrangements.

(a) ERISA. Except as disclosed in Schedule 5.11:

(i) Except as could not reasonably be expected to have a Material Adverse Effect, there are no Unfunded Liabilities (A) with respect to any member of the Group Companies and (B) with respect to any ERISA Affiliates; provided that for purposes of this Section 5.11(a)(i)(B) only, Unfunded Liabilities shall mean the amount (if any) by which the projected benefit obligation exceeds the value of the plan's assets as of its last valuation date.

(ii) Each Plan complies in all respects with the applicable requirements of ERISA and the Code, and each Group Company complies in all respects with the applicable requirements of ERISA and the Code with respect to all Multiemployer Plans to which it contributes, except to the extent that the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

(iii) Except to the extent that such ERISA Event could not reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or, subject to the passage of time, is reasonably expected to occur with respect to any Plan and, except to the extent that such ERISA Event would not reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or, subject to the passage of time, is reasonably expected to occur with respect to any Plan maintained or formerly maintained by an ERISA Affiliate.

(iv) No Group Company: (A) is or has been within the last six years a party to any Multiemployer Plan; or (B) has completely or partially withdrawn from any Multiemployer Plan, except to the extent that the participation in or withdrawal from such Multiemployer Plan could not reasonably be expected to have a Material Adverse Effect.

(v) If any Group Company or any ERISA Affiliate incurred or were to incur a complete or partial withdrawal (as described in Section 4203 of ERISA) from any Multiemployer Plan as of the Effective Date, the aggregate withdrawal liability, as determined under Section 4201 of ERISA, with respect to all such Multiemployer Plans would not exceed an amount that could reasonably be expected to have a Material Adverse Effect.

(vi) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which taxes could be imposed

pursuant to Section 4975(c)(1)(A)-(D) of the Code, for which an exemption under ERISA does not apply.

(vii) Except as could not reasonably be expected to have a Material Adverse Effect, no Group Company or, to the knowledge of any Group Company, any ERISA Affiliate has any contingent liability with respect to any post-retirement benefit under a Welfare Plan, other than liability for continuation coverage described in Part 6 of Title I of ERISA.

(viii) No Group Company has any material liability in connection with or arising from a Foreign Pension Plan.

(b) *Employee Benefit Arrangements.*

(i) All liabilities under the Employee Benefit Arrangements are (A) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing the Employee Benefit Arrangements, (B) insured with a reputable insurance company, (C) provided for or recognized in the financial statements most recently delivered to the Administrative Agent pursuant to Section 6.01(c) hereof or (D) estimated in the formal notes to the financial statements most recently delivered to the Administrative Agent pursuant to Section 6.01(a) hereof where such failure to fund, insure, provide for, recognize or estimate the liabilities arising under such arrangements could reasonably be expected to have a Material Adverse Effect.

(ii) There are no circumstances which may give rise to a liability in relation to the Employee Benefit Arrangements which are not funded, insured, provided for, recognized or estimated in the manner described in clause (i) above and which could reasonably be expected to have a Material Adverse Effect.

(iii) Each Group Company is in material compliance with all applicable Laws, trust documentation and contracts relating to the Employee Benefit Arrangements.

(iv) Except as set forth on Schedule 5.11, the execution and delivery of the Acquisition Agreement and the consummation of the transactions contemplated thereby (i) does not require any Group Company to make any contributions (including accelerating the timing of contributions) in respect of the Hillman Companies Inc. Non-Qualified Deferred Compensation Plan and (ii) does not otherwise increase the liability of any Group Company under such plan.

Section 5.12 Subsidiaries. Schedule 5.12 sets forth a complete and accurate list as of the Effective Date of all Subsidiaries of Holdings. Schedule 5.12 sets forth as of the Effective Date the jurisdiction of formation of each such Subsidiary, whether each such Subsidiary is a Subsidiary Guarantor, the number of authorized shares of each class of Equity Interests of each such Subsidiary, the number of outstanding shares of each class of Equity Interests, the number and percentage of outstanding shares of each class of Equity Interests of each such Subsidiary owned (directly or indirectly) by any Person and the number and effect, if exercised, of all Equity Equivalents with respect to Capital Stock of each such Subsidiary. All the outstanding Equity Interests of each Subsidiary of Holdings are validly issued, fully paid and non-assessable and were not issued in violation of the preemptive rights of any shareholder and, as of the Effective Date, are owned by Holdings, directly or indirectly, free and clear of all Liens (other than those arising under the Collateral Documents). Other than as set forth on Schedule 5.12, as of the Effective Date, no such Subsidiary has outstanding any Equity Equivalents nor does any such Person have outstanding any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or

claims of any character relating to, its Equity Interests. Holdings has no Subsidiaries, other than Intermediate Holdings, the Borrower and its Subsidiaries.

Section 5.13 Governmental Regulations, Etc.

(a) None of Holdings and its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation U. No part of the Letters of Credit or proceeds of the Loans will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" within the meaning of Regulation U. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form U-1 referred to in Regulation U. No indebtedness being reduced or retired out of the proceeds of the Loans was or will be incurred for the purpose of purchasing or carrying any margin stock within the meaning of Regulation U or any "margin security" within the meaning of Regulation T. "Margin stock" within the meaning of Regulation U does not constitute more than 25% of the value of the consolidated assets of Holdings and its Consolidated Subsidiaries. None of the transactions contemplated by this Agreement (including the direct or indirect use of the proceeds of the Loans) will violate or result in a violation of the Securities Act, the Exchange Act, or Regulation T, U or X.

(b) None of the Group Companies is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act or the Investment Company Act of 1940, each as amended. In addition, none of the Group Companies is (i) an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, (ii) controlled by such a company, or (iii) a "holding company", a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company" or of a "subsidiary" of a "holding company", within the meaning of the Public Utility Holding Company Act of 1934, as amended.

Section 5.14 Purpose of Loans and Letters of Credit. The proceeds of the Additional Term B Loans made on the Effective Date shall be used by the Borrower to (i) repay any Revolving Loans outstanding on the Effective Date and (ii) pay any fees and expenses paid in connection with the Transactions contemplated by this Agreement. The proceeds of the Revolving Loans and Swingline Loans made on and after the Effective Date will be used solely to provide for the working capital requirements of the Borrower and its Subsidiaries and for the general corporate purposes of the Borrower and its Subsidiaries. The Letters of Credit shall be used only for or in connection with appeal bonds, reimbursement obligations arising in connection with surety and reclamation bonds, reinsurance, domestic or international trade transactions and other obligations relating to transactions entered into by the Borrower and its Subsidiaries in the ordinary course of business and for the general corporate purposes of the Borrower and its Subsidiaries.

Section 5.15 Labor Matters. There are no strikes against Holdings or any of its Subsidiaries, other than any strikes that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The hours worked and payments made to employees of Holdings and its Subsidiaries have not been in violation in any material respect of the Fair Labor Standards Act or any other applicable Law dealing with such matters, except to the extent any such violation or violations, could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All payments due from Holdings or any of its Subsidiaries, or for which any claim may be made against Holdings or any of its Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Borrower and its Subsidiaries, as applicable. The consummation of the Transactions will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining

agreement to which Holdings or any of its Subsidiaries is a party or by which Holdings or any of its Subsidiaries (or any predecessor) is bound, other than collective bargaining agreements which, individually or in the aggregate, are not material to Holdings and its Subsidiaries taken as a whole.

Section 5.16 Environmental Matters. Except as disclosed on Schedule 5.16, no Group Company has failed to comply with any Environmental Law or to obtain, maintain, or comply with any permit, license or other approval required under any Environmental Law or is subject to any Environmental Liability which, in any of the foregoing cases, individually or collectively, could reasonably be expected to result in a Material Adverse Effect, or has received notice of any claim with respect to any Environmental Liability, or knows of any basis for any Environmental Liability against any Group Company, in either case which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.17 Intellectual Property. (a) Part A of Schedule 5.17 (as such schedule may be amended or supplemented from time to time) sets forth a true and complete list of (i) all United States and foreign registrations of and applications for Patents, Trademarks, domain names and Copyrights owned by Holdings and its domestic Subsidiaries and all material United States and foreign registrations of and applications for Patents, Trademarks, domain names and Copyrights owned by Foreign Subsidiaries of Holdings, and (ii) all Licenses material to the business of the Borrower and its Subsidiaries.

(b) Holdings and its Subsidiaries own, or possess the right to use, all of the Trademarks, service marks, trade names, Copyrights, Patents, Patent rights, franchises, Licenses and other rights that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except to the extent the failure to own or possess the right to use any such Intellectual Property could not reasonably be expected to have a Material Adverse Effect.

(c) To the best knowledge of Holdings and the Borrower, no Trademark, slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Borrower or any Subsidiary infringes upon any rights held by any other Person, except to the extent any such infringement, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(d) Holdings, the Borrower and their Subsidiaries have taken all action to maintain and preserve their rights in the Intellectual Property owned by Holdings, the Borrower and their Subsidiaries, including without limitation paying all renewal, maintenance, and other fees and taxes required to maintain each and every registration and application of Intellectual Property in full force and effect, except to the extent such action or proceeding would not have a Material Adverse Effect.

(e) The Intellectual Property material to the business of Holdings, the Borrower and their Subsidiaries is valid and enforceable in all material respects, and no holding, decision, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity of Holdings or the Borrower's or their Subsidiaries' right to register, or Holdings or the Borrower's or their Subsidiaries' rights to own or use any Intellectual Property, and no such action or proceeding is pending or, to Holdings or the Borrower's and their Subsidiaries' knowledge, threatened, except as disclosed in Part E of Schedule 5.17 or except to the extent the failure to do so would not have a Material Adverse Effect.

(f) All registrations and applications for Copyrights, Patents and Trademarks are standing in the name of the Borrower or one of its Subsidiaries, and no material Intellectual Property has been licensed by Holdings, the Borrower or their Subsidiaries to any third party, except in the ordinary

course of business (such Licenses in effect on the Effective Date being as disclosed in Part F of Schedule 5.17).

Section 5.18 Solvency. Each of Holdings and its Consolidated Subsidiaries (on a consolidated basis) and the Borrower and its Consolidated Subsidiaries (on a consolidated basis) is and, after consummation of the Transactions, will be Solvent.

Section 5.19 Disclosure. No information, or data (excluding financial projections, budgets, estimates and general market data) made by any Credit Party in any Senior Finance Document or furnished to the Administrative Agent or any Lender by or on behalf of any Credit Party in connection with any Senior Finance Document, when taken as a whole as of the date furnished contains any untrue statement of a material fact or omits any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not materially misleading in light of the circumstances under which such statements were made; provided that (i) to the extent any such statement, information or report therein was based upon or constitutes a forecast or projection, the Borrower represents only that it acted in good faith and utilized assumptions believed by it to be reasonable at the time made (it being understood and agreed that projections as to future events are not to be viewed as facts or guaranties of future performance, that actual results during the period or periods covered by such projections may differ from the projects results and that such differences may be material and that the Credit Parties make no representation that such representations will in fact be realized) and (ii) as to statements, information and reports specified as having been supplied by third parties, other than Affiliates of the Borrower or any of its Subsidiaries, the Borrower represents only that it is not aware of any material misstatement or omission therein.

Section 5.20 Collateral Documents.

(a) Article 9 Collateral. Each of the Security Agreement and the Pledge Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Finance Parties, a valid and enforceable security interest in the Collateral described therein and, taking into account the financing statements that were filed on or about the Closing Date in the offices specified on Schedule 4.01 to the Security Agreement and assuming that the Pledged Collateral that was delivered to the Collateral Agent on the Closing Date remains under the control of the Collateral Agent, each of the Security Agreement and the Pledge Agreement constitutes a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in such of the Collateral in which a security interest can be perfected under Article 9 of the Uniform Commercial Code, in each case securing the Finance Documents prior in right to any other Person, other than with respect to Permitted Liens.

(b) Intellectual Property. When financing statements in appropriate form are filed in the offices specified on Schedule 4.01 to the Security Agreement, the Assignment of Patents and Trademarks, substantially in the form of Exhibit A to the Security Agreement, is filed in the United States Patent and Trademark Office and the Assignment of Copyrights, substantially in the form of Exhibit B to the Security Agreement, is filed in the United States Copyright Office, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the United States trademarks, copyrights, patents, licenses and other intellectual property rights covered in such Assignments, in each case prior in right to any other Person (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a lien on registered trademarks, trademark applications and copyrights acquired by the Credit Parties after the Effective Date).

(c) Real Property Mortgages. The Mortgages are effective to create in favor of the Collateral Agent, for the ratable benefit of the Finance Parties, a legal, valid and enforceable Lien on all

of the right, title and interest of the Credit Parties in and to the Mortgaged Properties thereunder and the proceeds thereof, and when the Mortgages are filed in the offices specified on Schedule 5.20(c), the Mortgages shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Credit Parties in such Mortgaged Properties and the proceeds thereof, in each case prior in right to any other Person, other than with respect to Permitted Liens.

(d) Status of Liens. The Collateral Agent, for the ratable benefit of the Finance Parties, will at all times have the Liens provided for in the Collateral Documents and, subject to the filing by the Collateral Agent of continuation statements to the extent required by the Uniform Commercial Code, the Collateral Documents will at all times constitute valid and continuing liens of record and first priority perfected security interests in all the Collateral referred to therein, except as priority may be affected by Permitted Liens. As of the Effective Date, no filings or recordings are required in order to perfect or maintain the perfection of the security interests created under the Collateral Documents.

Section 5.21 Ownership.

(a) Securities of the Borrower. Intermediate Holdings owns good, valid and insurable legal title to all the outstanding common stock of the Borrower, free and clear of all Liens of every kind, whether absolute, matured, contingent or otherwise, other than those arising under the Collateral Documents. Except as set forth on Schedule 5.21, there are no shareholder agreements or other agreements pertaining to Intermediate Holdings' beneficial ownership of the common stock of the Borrower, including any agreement that would restrict Intermediate Holdings' right to dispose of such common stock and/or its right to vote such common stock.

(b) Holdings Equity Interests. Schedule 5.21 sets forth a true and accurate list as of the Effective Date of each holder of any Equity Interest or Equity Equivalent of Holdings, indicating the name of each such holder and the Equity Interest or Equity Equivalent held by each such Person. Except as set forth on Schedule 5.21, as of the Effective Date there are no shareholders agreements or other agreements pertaining to the Investor Group's beneficial ownership of the common stock of Holdings, including any agreement that would restrict the Investor Group's right to dispose of such common Equity Interests and/or its right to vote such common Equity Interests.

Section 5.22 Certain Transactions.

(a) Acquisition Agreement. On the Closing Date, (i) the Acquisition Agreement had not been amended or modified, nor had any material condition thereof been waived by Holdings or the Borrower, (ii) all conditions to the obligations of Holdings and the Borrower to consummate the transactions contemplated by the Acquisition Agreement were satisfied or waived in accordance with Section 4.01(h), (iii) all funds advanced on the Closing Date by the Lenders have been used in accordance with Section 5.14 of the Existing Credit Agreement and (iv) the transactions contemplated by the Acquisition Agreement were consummated in accordance with the Acquisition Agreement in all material respects and all applicable requirements of Law.

(b) Subordinated Debentures and Junior Debentures. On the Effective Date, (i) neither the Subordinated Debentures Documents nor the Junior Debentures Documents have been amended or modified, (ii) nor has any condition thereof been waived by the Borrower in a manner adverse in any material respect to the rights or interests of the Lenders, and (iii) all funds advanced by the Subordinated Debentures Holder on the Closing Date were used to consummate the transactions contemplated by the Acquisition Agreement.

(c) *No Broker's Fees*. Except as disclosed on Schedule 5.22, no broker's or finder's fee or commission will be payable with respect to this Agreement or any of the transactions contemplated hereby as a result of any action by or on behalf of the Borrower or their Affiliates, and each of Holdings and the Borrower hereby indemnifies each Agent and each Lender against, and agrees that it will hold each Agent and each Lender harmless from, any claim, demand or liability for any such broker's or finder's fees alleged to have been incurred in connection herewith or therewith and any expenses (including reasonable fees, expenses and disbursements of counsel) arising in connection with any such claim, demand or liability.

ARTICLE VI AFFIRMATIVE COVENANTS

Each of Holdings, Intermediate Holdings and the Borrower agrees that so long as any Lender has any Commitment hereunder, any Senior Obligation or other amount payable hereunder or under any Note or other Senior Finance Document or any LC Obligation (in each case other than contingent indemnification obligations) remains unpaid or any Letter of Credit remains in effect:

Section 6.01 Information. The Borrower will furnish, or cause to be furnished, to the Administrative Agent for delivery to each of the Lenders:

(a) *Annual Financial Statements*. As soon as available, and in any event within 120 days after the end of each fiscal year of the Borrower, a consolidated balance sheet and income statement of Holdings and its Consolidated Subsidiaries, as of the end of such fiscal year, and the related consolidated statement of operations and retained earnings and consolidated statement of cash flows for such fiscal year, setting forth in comparative form consolidated figures for the preceding fiscal year and corresponding figures from the annual forecast, all such financial statements to be in reasonable form and detail and (in the case of such consolidated financial statements) audited by independent certified public accountants of recognized national standing reasonably acceptable to the Lead Arrangers and accompanied by an opinion of such accountants (which shall not be qualified or limited in any material respect) to the effect that such consolidated financial statements have been prepared in accordance with GAAP and present fairly in all material respects the consolidated financial position and consolidated results of operations and cash flows of Holdings and its Consolidated Subsidiaries in accordance with GAAP consistently applied (except for changes with which such accountants concur) and accompanied by a written statement by the accountants reporting on compliance with this Agreement to the effect that in the course of the audit upon which their opinion on such financial statements was based (but without any special or additional audit procedures for the purpose), they obtained knowledge of no condition or event relating to financial matters which constitutes a Default or an Event of Default or, if such accountants shall have obtained in the course of such audit knowledge of any such Default or Event of Default, disclosing in such written statement the nature and period of existence thereof, it being understood that such accountants shall be under no liability, directly or indirectly, to the Lenders for failure to obtain knowledge of any such condition or event.

(b) *Quarterly Financial Statements*. As soon as available, and in any event within 45 days after the end of each of the first three fiscal quarters in each fiscal year of the Borrower, a consolidated balance sheet of Holdings and its Consolidated Subsidiaries as of the end of such fiscal quarter, together with related consolidated statement of operations and retained earnings and consolidated statement of cash flows for such fiscal quarter and the then elapsed portion of such fiscal year, setting forth in comparative form consolidated figures for the corresponding periods of the preceding fiscal year and the annual forecast, all such financial statements to be in form and detail and reasonably acceptable to the Administrative Agent, and accompanied by a certificate of the chief financial officer of the Borrower to the effect that such quarterly financial statements have been prepared in accordance with GAAP and

present fairly in all material respects the consolidated financial position and consolidated results of operations and cash flows of Holdings and its Consolidated Subsidiaries in accordance with GAAP consistently applied, subject to changes resulting from normal year-end audit adjustments and the absence of footnotes required by GAAP.

(c) Monthly Financial Statements. As soon as available, and in any event within 30 days after the end of each month in each fiscal year of the Borrower, a consolidated balance sheet of Holdings and its Consolidated Subsidiaries as of the end of such month, together with related consolidated statement of operations and retained earnings and consolidated statement of cash flows for such month and the then elapsed portion of such fiscal year, setting forth in comparative form consolidated figures for the corresponding periods of the preceding fiscal year and the annual forecast, all such financial statements to be in form and detail and reasonably acceptable to the Lenders, and accompanied by a certificate of the chief financial officer of the Borrower to the effect that such monthly financial statements have been prepared in accordance with GAAP and present fairly in all material respects the consolidated financial position and consolidated results of operations and cash flows of Holdings and its Consolidated Subsidiaries in accordance with GAAP consistently applied, subject to changes resulting from normal year-end audit adjustments and the absence of footnotes required by GAAP.

(d) Officer's Certificate. At the time of delivery of the financial statements provided for in Sections 6.01(a) and 6.01(b) above, a certificate of the chief financial officer or other appropriate Responsible Officer of the Borrower (i) demonstrating compliance with the financial covenants contained in Section 7.17 by calculation thereof as of the end of the fiscal period covered by such financial statements, (ii) stating that no Default or Event of Default exists, or if any Default or Event of Default does exist, specifying the nature and extent thereof and what action the Borrower and the other Credit Parties propose to take with respect thereto and (iii) stating whether, since the date of the most recent financial statements delivered hereunder, there has been any material change in the GAAP applied in the preparation of the financial statements of Holdings and its Consolidated Subsidiaries, and, if so, describing such change. At the time such certificate is required to be delivered, the Borrower shall promptly deliver to the Administrative Agent, at the Administrative Office, information regarding any change in the Leverage Ratio that would change the then existing Applicable Margin.

(e) Annual Business Plan and Budgets. At least 90 days after the end of each fiscal year of the Borrower, an annual business plan and budget of Holdings and its Consolidated Subsidiaries containing, among other things, projected financial statements for the then-current fiscal year.

(f) Excess Cash Flow. Within 120 days after the end of each fiscal year of the Borrower, a certificate of the chief financial officer of the Borrower containing information regarding the calculation of Excess Cash Flow for such fiscal year.

(g) Auditor's Reports. Within five Business Days of receipt thereof, a copy of any other final report or "management letter" submitted by independent accountants to Holdings, the Borrower or any of their respective Subsidiaries in connection with any annual, interim or special audit of the books of Holdings, the Borrower or any of their respective Subsidiaries.

(h) Reports. Promptly upon transmission or receipt thereof, copies of all filings and registrations with, and reports to or from, the Securities and Exchange Commission, or any successor agency, and copies of all financial statements, proxy statements, notices and reports any Group Company shall send to its shareholders generally or to a holder of the Subordinated Debentures or the Junior Debentures or holders of any other Debt (excluding Capital Leases) owed by any Group Company where

the outstanding amount of principal and interest in respect of such other Debt exceeds \$5,000,000, in their capacity as such a holder.

(i) Notices. Prompt notice of: (i) the occurrence of any Default or Event of Default; (ii) any matter that has resulted or may result in a Material Adverse Effect, including (A) breach or non-performance of, or any default under, any material agreement of Holdings or any of its Subsidiaries; (B) any dispute, litigation, investigation, proceeding or suspension between Holdings or any of its Subsidiaries and any Governmental Authority; (C) the commencement of, or any material adverse development in, any litigation or proceeding affecting Holdings or any of its Subsidiaries, including pursuant to any applicable Environmental Law; (D) any litigation, investigation or proceeding affecting any Credit Party in which the amount involved exceeds \$5,000,000, or in which injunctive relief or similar relief is sought, which relief, if granted, could be reasonably expected to have a Material Adverse Effect; and (E) any material change in accounting policies or financial reporting practice by Holdings or any of its Subsidiaries. Each notice pursuant to this Section 6.01(h) shall (i) be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower or any other Credit Party has taken and proposes to take with respect thereto and (ii) describe with particularity any and all provisions of this Agreement or the other Senior Finance Documents that have been breached.

(j) Employee Benefits Arrangements. (i) The Borrower will give written notice to the Administrative Agent promptly (and in any event within five Business Days after any officer of any Group Company obtains knowledge thereof) of: (A) any event or condition that constitutes, or is reasonably likely to lead to, an ERISA Event; (B) any change in the funding status of any Plan that could reasonably be expected to have a Material Adverse Effect, together with a description of any such event or condition or a copy of any such notice and a statement by the chief financial officer of the Borrower briefly setting forth the details regarding such event, condition or notice and the action, if any, which has been or is being taken or is proposed to be taken by the Borrower and the other Credit Parties with respect thereto; or (C) any event or condition that constitutes, or is reasonably likely to lead to, an event described in Section 8.01(h)(iii)-(viii). Promptly upon request, the Borrower shall furnish the Administrative Agent and the Lenders with such additional information concerning any Plan or Employee Benefit Arrangement as may be reasonably requested, including, but not limited to, with respect to any Plans, copies of each annual report/return (Form 5500 series), as well as all schedules and attachments thereto required to be filed with the Department of Labor and/or the Internal Revenue Service pursuant to ERISA and the Code, respectively, for each "plan year" (within the meaning of Section 3(39) of ERISA) of each Plan; and (ii) the Borrower will promptly deliver to the Administrative Agent the most recently prepared actuarial reports in relation to the Employee Benefit Arrangements for the time being operated by Group Companies which are prepared in order to comply with the then current statutory or auditing requirements within the relevant jurisdiction.

(k) Domestication in Other Jurisdiction. Not less than 20 days prior to any change in the jurisdiction of organization of any Credit Party, a copy of all documents and certificates intended to be filed or otherwise executed to effect such change.

(l) Other Information. With reasonable promptness upon request therefor, such other information regarding the business, properties or financial condition of any Group Company as the Administrative Agent or any other Finance Party may reasonably request, which may include such information as any Senior Finance Party may reasonably determine is necessary or advisable to enable it either (i) to comply with the policies and procedures adopted by it and its Affiliates to comply with the Bank Secrecy Act, the U.S. Patriot Act and all applicable regulations thereunder or (ii) to respond to requests for information concerning Holdings and its Subsidiaries from any government, self-regulatory organization or financial institution in connection with its anti-money laundering and anti-terrorism

regulatory requirements or its compliance procedures under the U.S. Patriot Act, including in each case information concerning the Borrower's direct and indirect shareholders and its use of the proceeds of the Credit Extensions hereunder.

Section 6.02 Preservation of Existence and Franchises. Except as a result of or in connection with a dissolution, merger or disposition of a Subsidiary of the Borrower permitted under Section 7.04 or Section 7.05, each Group Company will do all things necessary to preserve and keep in full force and effect its legal existence and do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business and to maintain and operate such business in substantially the manner in which it is presently conducted and operated; provided, however, that neither Holdings nor any of its Subsidiaries shall be required to preserve any such rights, licenses, permits, franchises, authorizations or Intellectual Property if the preservation thereof is no longer desirable in the conduct of the business of the Borrower and its Subsidiaries or the loss thereof could not reasonably be expected to result in a Material Adverse Effect.

Section 6.03 Books and Records; Lender Meeting. Each of the Group Companies will keep complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP (including the establishment and maintenance of appropriate reserves). At the request of the Administrative Agent, within 110 days after the end of each fiscal year of the Borrower, the Borrower will conduct a meeting (which may be by telephone) of the Lenders to discuss such fiscal year's results and the financial condition of Holdings and its Consolidated Subsidiaries. Such meetings shall be held at times and places convenient to the Lenders and to the Borrower.

Section 6.04 Compliance with Law; Employee Benefit Arrangements. Each of the Group Companies will comply with all requirements of Law applicable to it and its properties to the extent that noncompliance with any such requirement of Law could reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, each of the Group Companies will do each of the following as it relates to any Plan, Foreign Pension Plan or Employee Benefit Arrangement, except to the extent that failure to do any of the following could not reasonably be expected to have a Material Adverse Effect: (i) maintain each Plan, Foreign Pension Plan and Employee Benefit Arrangement in compliance in all material respects with the applicable provisions of ERISA, the Code or other Federal, state or foreign law; (ii) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualifications; (iii) make all required contributions to any Plan subject to Section 412 of the Code and make all required contributions to Multiemployer Plans; (iv) ensure that there are no Unfunded Liabilities in excess of an amount that could reasonably be expected to have a Material Adverse Effect; (v) except for the obligations set forth on Schedule 5.11, not become a party to any Multiemployer Plan; (vi) make all contributions (including any special payments to amortize any Unfunded Liabilities) required to be made in accordance with all applicable laws and the terms of each Foreign Pension Plan in a timely manner; (vii) ensure that all liabilities under the Employee Benefit Arrangements are either (A) funded to at least the minimum level required by Law or, if higher, to the level required by the terms governing the Employee Benefit Arrangements; (B) insured with a reputable insurance company; (C) provided for or recognized in the accounts most recently delivered to the Administrative Agent under Section 6.01(c); or (D) estimated in the formal notes to the accounts most recently delivered to the Administrative Agent under Section 6.01(a); (viii) ensure that the contributions or premium payments to or in respect of all Employee Benefit Arrangements are and continue to be promptly paid at no less than the rates required under the rules of such arrangements and in accordance with the most recent actuarial advice received in relation to the Employee Benefit Arrangement and generally in accordance with applicable law; and (ix) shall use its reasonable efforts to cause each ERISA Affiliate to do each of the items listed in clauses (i) through (iv) above as it relates to Plans maintained by or contributed to by such ERISA Affiliate.

Section 6.05 Payment of Taxes. Each of the Group Companies will pay and discharge (i) all taxes, assessments and other governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become delinquent and (ii) all lawful claims (including claims for labor, materials and supplies) which, if unpaid, might give rise to a Lien (other than a Permitted Lien) upon any of its properties; provided, however, that no Group Company shall be required to pay any such tax, assessment, charge, levy or claim (i) which is being contested in good faith by appropriate proceedings diligently pursued and as to which adequate reserves have been established in accordance with GAAP, (ii) in respect of immaterial, state, local or foreign taxes, or (iii) unless the failure to make any such payment (A) could give rise to an immediate right to foreclose on a Lien securing such amounts (unless proceedings thereto conclusively operate to stay such foreclosure) or (B) could reasonably be expected to have a Material Adverse Effect.

Section 6.06 Insurance: Certain Proceeds.

(a) Insurance Policies. Each of the Group Companies will at all times maintain in full force and effect insurance (including worker's compensation insurance, liability insurance or casualty insurance) in such amounts, covering such risk and liabilities and with such deductibles or self-insurance retentions as are in accordance with normal industry practice or otherwise consistent with past practice of the Group Companies or prudent in the reasonable business judgment of the senior management of the Borrower. The Collateral Agent shall be named as loss payee or mortgagee, as its interest may appear, with respect to all such property and casualty policies and additional insured with respect to all such other policies (other than workers' compensation, employee health and directors and officers policies), and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that if the insurance carrier shall have received written notice from the Collateral Agent of the occurrence and continuance of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to Holdings or one or more of its Subsidiaries under such policies directly to the Collateral Agent (which agreement shall be evidenced by a "standard" or "New York" lender's loss payable endorsement in the name of the Collateral Agent on Accord Form 27) and that it will give the Collateral Agent 30 days' prior written notice before any such policy or policies shall be altered or canceled, and that no act or default of any Group Company or any other Person shall affect the rights of the Collateral Agent or the Lenders under such policy or policies.

(b) Loss Events. In case of any Casualty or Condemnation with respect to any property of any Group Company or any part thereof in excess of \$1,000,000, the Borrower shall promptly give written notice thereof to the Administrative Agent generally describing the nature and extent of such damage, destruction or taking. The Borrower shall, or shall cause such Group Company to, repair, restore or replace the property of such Person (or part thereof) which was subject to such Casualty or Condemnation, at such Person's cost and expense, whether or not the Insurance Proceeds or Condemnation Award, if any, received on account of such event shall be sufficient for that purpose; provided, however, that such property need not be repaired, restored or replaced to the extent the failure to make such repair, restoration or replacement (i) is desirable to the proper conduct of the business of such Person in the ordinary course and otherwise in the best interest of such Person or (ii) the failure to repair, restore or replace the property is attributable to the contemplated application of the Insurance Proceeds from such Casualty or the Condemnation Award from such Condemnation to the acquisition of other tangible assets used or useful in the business of the Borrower and its Subsidiaries as contemplated in the definition of "Reinvestment Funds" in Section 1.01 or to payment of the Senior Obligations in accordance with the provisions of Section 2.09(b)(iv).

(c) Certain Rights of the Lenders. In connection with the covenants set forth in this Section 6.06, it is understood and agreed that none of the Agents, the Lenders or their respective agents or employees shall be liable for any loss or damage insured by the insurance policies required to be

maintained under this Section 6.06, it being understood that the Group Companies shall look solely to their insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage.

Section 6.07 Maintenance of Property. Each of the Group Companies will maintain and preserve its properties and equipment material to the conduct of its business in good repair, working order and condition, normal wear and tear and Casualty and Condemnation excepted, and will make, or cause to be made, as to such properties and equipment from time to time all repairs, renewals, replacements, extensions, additions, betterments and improvements thereto as may be needed or proper in the reasonable good faith business judgment of the Responsible Officers of such Group Companies.

Section 6.08 Use of Proceeds. The Borrower will use the proceeds of the Loans and will use the Letters of Credit solely for the purposes set forth in Section 5.14.

Section 6.09 Audits/Inspections. Upon reasonable notice and during normal business hours, each of the Group Companies will permit representatives appointed by the Agents or the Required Lenders to visit and inspect its executive offices and/or manufacturing facilities and, following the occurrence and during the continuance of any Event of Default, any of its properties, to review and inspect its books and records, accounts receivable and inventory, and to make photocopies or photographs thereof and to write down and record any information such representatives obtain and shall permit the Agents or such representatives to investigate and verify the accuracy of information provided to the Lenders and to discuss all such matters with the officers, employees, independent accountants and representatives of the Group Companies, in each case so long as a Responsible Officer has been given the opportunity to be present; provided, however, that prior to the occurrence and continuance of an Event of Default, such visits shall be limited to one per year per location, and the Group Companies shall not be obligated to reimburse the expenses of more than two representatives of the Administrative Agent and the Lenders in the aggregate.

Section 6.10 Additional Credit Parties; Additional Security.

(a) Additional Subsidiary Guarantors. Each of Holdings and the Borrower will take, and will cause each of its Subsidiaries (other than Foreign Subsidiaries, except to the extent provided in subsection (d) below) to take, such actions from time to time as shall be necessary to ensure that all Subsidiaries of Holdings (other than the Borrower and Foreign Subsidiaries, except to the extent provided in subsection (d) below) are Subsidiary Guarantors. Without limiting the generality of the foregoing, if any Group Company shall form or acquire any new Subsidiary, the Borrower, as soon as practicable and in any event within 30 days after such formation or acquisition, will provide the Collateral Agent with notice of such formation or acquisition setting forth in reasonable detail a description of all of the assets of such new Subsidiary and will cause such new Subsidiary (other than a Foreign Subsidiary, except to the extent provided in subsection (d) below) to:

(i) within 30 days after such formation or acquisition, execute an Accession Agreement pursuant to which such new Subsidiary shall agree to become a "Guarantor" under the Guaranty, an "Obligor" under the Security Agreement, an "Obligor" under the U.S. Pledge Agreement and/or an obligor under such other Collateral Documents as may be applicable to such new Subsidiary; and

(ii) deliver such proof of organizational authority, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Credit Party pursuant to Section 4.01 on the Closing Date or as the Administrative Agent, the Collateral Agent or the Required Lenders reasonably shall have requested.

(b) Additional Security. Each of Holdings and the Borrower will cause, and will cause each of its Subsidiaries (other than a Foreign Subsidiary, except to the extent provided in subsection (d) below) to cause, (i) all of its owned Real Properties and personal property located in the United States, other than those owned Real Properties set forth on Schedule 6.10(b) and other than owned Real Properties which are subject to a Permitted Lien the terms of which prohibit the granting of a Lien thereon in favor of the Finance Parties and (ii) to the extent deemed to be material by the Administrative Agent or the Required Lenders in its or their sole reasonable discretion, (A) all of its personal property located in the United States (except to the extent expressly excluded from the Collateral Documents), (B) all of its leased Real Properties located in the United States (other than leaseholds the terms of which prohibit the granting of a Lien thereon in favor of the Finance Parties) and (C) all other assets and properties of Holdings and its Domestic Subsidiaries located in the United States as are not covered by the original Collateral Documents (or specifically excluded therefrom) and as may be requested by the Collateral Agent or the Required Lenders in their sole reasonable discretion to be subject at all times to first priority (subject only to Permitted Liens), perfected and, in the case of Real Property (whether leased or owned), title insured Liens in favor of the Collateral Agent pursuant to the Collateral Documents or such other security agreements, pledge agreements, mortgages or similar collateral documents as the Collateral Agent shall request in its sole and reasonable discretion (collectively, the "Additional Collateral Documents"). With respect to any Real Property (whether leased or owned) located in the United States acquired or leased by any Credit Party subsequent to the Effective Date for which the Collateral Agent is entitled to a Lien pursuant to the preceding sentence, such Person will cause to be delivered to the Collateral Agent with respect to such Real Property (other than immaterial leased properties or except for properties with respect to which landlord consent for such Mortgage cannot be obtained after commercially reasonable efforts by the Borrower, to do so or as otherwise approved by the Administrative Agent) documents, instruments and other items of the types required to be delivered pursuant to Section 4.01(k), all in form, content and scope reasonably satisfactory to the Collateral Agent. In furtherance of the foregoing terms of this Section 6.10, the Borrower agrees to promptly provide the Administrative Agent with written notice of the acquisition by Holdings or any of its Subsidiaries of any Real Property located in the United States having a market value greater than \$500,000 or the entering into a lease by Holdings or any of its Subsidiaries of any Real Property located in the United States for annual rent of \$150,000 or more, setting forth in each case in reasonable detail the location and a description of the asset(s) so acquired or leased. Without limiting the generality of the foregoing, Holdings and the Borrower will cause, and will cause each of their respective Subsidiaries to cause, 100% of the Equity Interests of each of their respective direct and indirect Subsidiaries (or 65% of such Equity Interests, if such Subsidiary is a direct Foreign Subsidiary, except as provided in subsection (d) below) to be subject at all times to a first priority, perfected Lien in favor of the Collateral Agent pursuant to the terms and conditions of the Collateral Documents, subject only to Permitted Liens described in paragraph (ii) and/or (iv) of Section 7.02.

If, subsequent to the Effective Date, a Credit Party shall acquire any Intellectual Property, securities, instruments, chattel paper or other personal property required to be delivered to the Collateral Agent as Collateral under any of the Collateral Documents, the Borrower shall promptly (and in any event within 10 Business Days after any Responsible Officer of any Credit Party acquires knowledge of the same) notify the Collateral Agent of the same. Each of the Credit Parties shall adhere to the covenants regarding the location of personal property as set forth in the Collateral Documents.

All such security interests and mortgages shall be granted pursuant to documentation consistent with the Collateral Documents executed on the Closing Date and otherwise reasonably satisfactory in form and substance to the Collateral Agent and shall constitute valid and enforceable perfected security interests and mortgages prior to the rights of all third Persons and subject to no other Liens except for Permitted Liens. The Additional Collateral Documents or instruments related thereto shall have been duly recorded or filed in such manner and in such places as are required by law to

establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Collateral Documents, and all taxes, fees and other charges payable in connection therewith shall have been paid in full. The Borrower shall cause to be delivered to the Collateral Agent such opinions of counsel, title insurance and other related documents as may be reasonably requested by the Collateral Agent to assure itself that this Section 6.10(b) has been complied with.

(c) Real Property Appraisals. If the Collateral Agent or the Required Lenders determine that they are required by law or regulation to have appraisals prepared in respect of the Real Property of any Group Company constituting Collateral, the Borrower shall provide to the Collateral Agent appraisals which satisfy the applicable requirements set forth in 12 C.F.R., Part 34 — Subpart C or any successor or similar statute, rule, regulation, guideline or order, and which shall be in scope, form and substance, and from appraisers, reasonably satisfactory to the Required Lenders and shall be accompanied by a certification of the appraisal firm providing such appraisals that the appraisals comply with such requirements.

(d) Foreign Subsidiaries Security. If, following a change that is reasonably determined to be relevant by the Administrative Agent in the relevant sections of the Code or the regulations, rules, rulings, notices or other official pronouncements issued or promulgated thereunder, counsel for the Borrower reasonably acceptable to the Collateral Agent and the Required Lenders fails within 90 days after a reasonable request from the Collateral Agent and the Required Lenders to deliver evidence, in form and substance mutually satisfactory to the Collateral Agent and the Borrower, with respect to any Foreign Subsidiary of Holdings which has not already had all of the Equity Interests issued by it pledged pursuant to the Pledge Agreement that (i) a pledge (A) of two-thirds or more of the total combined voting power of all classes of capital stock of such Foreign Subsidiary entitled to vote, and (B) of any promissory note issued by such Foreign Subsidiary to the Borrower or any of its Domestic Subsidiaries, (ii) the entering into by such Foreign Subsidiary of a guaranty in form and substance substantially similar to the Guaranty, (iii) the entering into by such Foreign Subsidiary of a security agreement in form and substance substantially similar to the Security Agreement, and (iv) the entering into by such Foreign Subsidiary of a pledge agreement substantially similar to the Pledge Agreement, in any such case would reasonably be expected to be restricted by applicable Law of the jurisdiction of organization of such Foreign Subsidiary or would reasonably be expected to cause the undistributed earnings or future earnings, if any, of such Foreign Subsidiary as determined for United States federal income tax purposes to be included as gross income of such Foreign Subsidiary's United States parent (or other domestic Affiliate) for United States federal income tax purposes, then, (A) in the case of a failure to deliver the evidence described in clause (i) above, that portion of such Foreign Subsidiary's outstanding capital stock or any promissory notes so issued by such Foreign Subsidiary, in each case not theretofore pledged pursuant to the Pledge Agreement, shall be pledged to the Collateral Agent for the benefit of the Finance Parties pursuant to the Pledge Agreement (or another pledge agreement in substantially similar form, if needed), in each case only to the extent that such pledge would not reasonably be expected to cause the undistributed earnings or future earnings, if any, of such Foreign Subsidiary as determined for United States federal income tax purposes to be included in gross income of such Foreign Subsidiary's United States parent (or other domestic Affiliate) for United States federal income tax purposes or would not reasonably be expected to be restricted by Applicable Law of the jurisdiction of organization of such Foreign Subsidiary; (B) in the case of a failure to deliver the evidence described in clause (ii) above, such Foreign Subsidiary shall execute and deliver the Guaranty (or another guaranty in substantially similar form, if needed), guaranteeing the Finance Obligations; (C) in the case of a failure to deliver the evidence described in clause (iii) above, such Foreign Subsidiary shall execute and deliver the Security Agreement (or another security agreement in substantially similar form, if needed), granting to the Collateral Agent, for the benefit of the Finance Parties, a security interest in all of such Foreign Subsidiary's assets and securing the Finance Obligations; and (D) in the case of a failure to

deliver the evidence described in clause (iv) above, such Foreign Subsidiary shall execute and deliver the Pledge Agreement (or another pledge agreement in substantially similar form, if needed), pledging to the Collateral Agent, for the benefit of the Finance Parties, all of the capital stock and promissory notes owned by such Foreign Subsidiary, in each case to the extent that entering into the Guaranty, Security Agreement or Pledge Agreement is permitted by the Laws of the respective foreign jurisdiction and with all documents delivered pursuant to this Section 6.10(d) to be in form, scope and substance reasonably satisfactory to the Collateral Agent and the Required Lenders.

(e) Each of Holdings and the Borrower agrees that, except as otherwise provided in this Section 6.10, each action required by this Section 6.10 shall be completed as soon as reasonably possible, but in no event later than 90 days after such action is either requested to be taken by the Collateral Agent or the Required Lenders or required to be taken by Holdings or any of its Subsidiaries pursuant to the terms of this Section 6.10.

Section 6.11 Interest Rate Protection Agreements. Within 90 days after the Closing Date, the Borrower will have entered into and thereafter maintained in full force and effect interest rate swaps, rate caps, collars or other similar agreements or arrangements designed to hedge the position of the Borrower with respect to interest rates at rates and on terms reasonably satisfactory to the Lead Arrangers, taking into account current market conditions, the effect of which is that at least 50% of the Consolidated Debt of Holdings and its Consolidated Subsidiaries will bear interest at a fixed or capped rate or the interest cost in respect of which will be fixed or capped for a period expiring no earlier than 24 months after the Closing Date. The Borrower shall have promptly delivered evidence of the execution and delivery of such agreements to the Administrative Agent.

Section 6.12 Contributions. Within three Business Days following its receipt thereof, Holdings will contribute as a common equity contribution to the capital of Intermediate Holdings which will then contribute an equal amount to the capital of the Borrower, any cash proceeds received by Holdings after the Effective Date from any Asset Disposition, Casualty, Condemnation, Debt Issuance or Equity Issuance or any cash capital contributions received by Holdings after the Effective Date (less any Restricted Payments permitted under Section 7.07 and made in connection with such Asset Disposition, Casualty, Condemnation, Debt Issuance, Equity Issuance or cash capital contribution).

ARTICLE VII NEGATIVE COVENANTS

Each of Holdings, Intermediate Holdings and the Borrower agrees that so long as any Lender has any Commitment hereunder, any Senior Obligations or other amount payable hereunder or under any Note or other Senior Finance Document or any LC Obligation (in each case other than contingent indemnification obligations) remains unpaid or any Letter of Credit remains unexpired:

Section 7.01 Limitation on Debt. None of the Group Companies will incur, create, assume or permit to exist any Debt, Derivatives Obligations or Synthetic Lease Obligations except:

- (i) Debt of the Credit Parties under this Agreement and the other Senior Finance Documents;
- (ii) Debt arising under (A) the Subordinated Debentures Indenture and the Subordinated Debentures and (B) the Junior Debentures Indenture and the Junior Debentures (but with respect to this clause (B) not including any renewal, refinancing or extension thereof);

(iii) Capital Lease Obligations and Purchase Money Debt of the Borrower and its Subsidiaries incurred after the Closing Date to finance Capital Expenditures permitted by Section 7.14; provided that (A) the aggregate amount of all such Debt (together with refinancing thereof permitted by clause (v) below) does not exceed \$10,000,000 at any time outstanding, (B) the aggregate amount of all such Debt consisting of Capital Lease Obligations (together with refinancing thereof permitted by clause (v) below) does not exceed \$7,500,000 at any time outstanding, (C) the Debt when incurred shall not be less than 80% or more than 100% of the lesser of the cost or fair market value as of the time of acquisition of the asset financed, (D) such Debt is issued and any Liens securing such Debt are created concurrently with, or within 120 days after, the acquisition of the asset financed and (E) no Lien securing such Debt shall extend to or cover any property or asset of any Group Company other than the asset so financed;

(iv) Debt of the Borrower or its Subsidiaries secured by Liens permitted by clauses (xi), (xii) and (xiii) of Section 7.02 or any other Debt acquired or assumed in a Permitted Business Acquisition or in connection with the acquisition of assets; provided that (A) the aggregate principal amount of all Debt incurred or assumed pursuant to this clause (iv) (together with refinancings thereof permitted by clause (v) below) shall not exceed (x) in the aggregate, together with all Debt incurred pursuant to clause (xi) below, \$40,000,000 at any time outstanding and (y) in the case of any such Debt that does not constitute unsecured Subordinated Debt (together with all Debt incurred pursuant to subclause (B) of the proviso to clause (xi) below), \$20,000,000 at any time outstanding, and (B) such Debt was not incurred in connection with, or in anticipation of, the events described in such clauses;

(v) Debt (A) of the Borrower representing a refinancing, replacement or refunding of the Subordinated Debentures and Subordinated Debentures Indenture, (B) of Holdings representing a refinancing, replacement or refunding of the Junior Debentures and Junior Debentures Indenture permitted by clause (ii) above, provided that the Required Lenders shall have given their prior written consent to such refinancing, replacement or refunding, which consent shall not be unreasonably withheld or delayed, or (C) of the Borrower or its Subsidiaries representing a refinancing, replacement or refunding of Debt permitted by clause (iii) or (iv) above, provided in each case that (A) such Debt (the "Refinancing Debt") is an original aggregate principal amount not greater than the aggregate principal amount of, and unpaid interest on, the Debt being refinanced, replaced or refunded plus the amount of any premiums required to be paid thereon and fees and expense associated therewith, (B) such Refinancing Debt has a later or equal final maturity and a larger or equal weighted average life than the Debt being refinanced, replaced or refunded, (C) if the Debt being refinanced, replaced or refunded is subordinated to the Senior Obligations, such Refinancing Debt is subordinated to the Senior Obligations on terms no less favorable to the Lenders than the terms of the Debt being refinanced, replaced or refunded, (D) the covenants, events of default and any Guaranty Obligations in respect thereof shall be no less favorable to the Lenders than those contained in the Debt being refinanced, replaced or refunded and (E) at the time of, and after giving effect to, such refinancing, replacement or refunding, no Default or Event of Default shall have occurred and be continuing;

(vi) Derivatives Obligations of the Borrower or any Subsidiary under Derivatives Agreements to the extent entered into after the Closing Date in compliance with Section 6.11 or to manage interest rate or foreign currency exchange rate risks and not for speculative purposes;

(vii) Debt owed to any Person providing property, casualty, liability or other insurance to the Borrower or any Subsidiary of the Borrower, so long as such Debt shall not be in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such

insurance for the year in which such Debt is incurred and such Debt shall be outstanding only during such year;

(viii) Debt consisting of Guaranty Obligations (A) by Holdings and Intermediate Holdings in respect of Debt incurred by the Borrower under the Subordinated Debentures or otherwise permitted to be incurred by the Borrower or any of its subsidiaries, provided, however, that all such Guaranty Obligations by Holdings and Intermediate Holdings shall be unsecured, (B) by Holdings in respect of Debt incurred by Hillman Group Capital Trust under the Trust Preferred Securities, (C) by the Borrower in respect of Debt permitted to be incurred by the Subsidiaries of the Borrower and (D) by Subsidiaries of the Borrower of Debt permitted to be incurred by the Borrower or Subsidiaries of the Borrower;

(ix) (A) Debt owing to the Borrower or a Subsidiary of the Borrower to the extent permitted by Section 7.06(a)(ix), (x), (xi) or (xxi) and (B) Debt owing by the Borrower to Holdings or Intermediate Holdings to the extent permitted by (x) Section 7.06(a)(xi) or (y) incurred in connection with tax planning, provided that in the case of (y) the Administrative Agent shall have given its prior consent such consent not to be unreasonably withheld;

(x) contingent liabilities in respect of any indemnification, adjustment of purchase price, earn-out, incentive, non-compete, consulting, deferred compensation and similar obligations of Holdings and its Subsidiaries incurred in connection with the Acquisition and Permitted Business Acquisitions;

(xi) Debt of the Borrower or any of its Subsidiaries that is issued to a seller of assets or a Person the subject of a Permitted Business Acquisition or that is otherwise incurred to fund consideration payable in a Permitted Business Acquisition (and for no other purpose) in a transaction permitted by this Agreement in an aggregate principal amount at any one time outstanding not exceeding \$40,000,000; provided that (A) any such Debt that constitutes Subordinated Debt shall be unsecured and (B) any such Debt other than Subordinated Debt shall not (together with all Debt assumed pursuant to subclause (A)(y) of the proviso to clause (iv) above) exceed \$20,000,000 at any one time outstanding;

(xii) unsecured Debt of Holdings or Intermediate Holdings representing the obligation of Holdings or Intermediate Holdings to make payments with respect to the cancellation or repurchase of certain Equity Interests of officers, employees or directors (or their estates) of Holdings and its Subsidiaries, to the extent permitted by Section 7.07(iii);

(xiii) contingent liabilities in respect of any indemnification, adjustment of purchase price, earn-out, incentive, non-compete, consulting, deferred compensation and similar obligations of Holdings and its Subsidiaries incurred or assumed in connection with the disposition of any business, assets or a Subsidiary, other than Guaranty Obligations in respect of Debt of any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(xiv) Debt in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(xv) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of

business; provided that (A) such Debt (other than credit or purchase cards) is extinguished within three Business Days of its incurrence and (B) such Debt in respect of credit or purchase cards in extinguished within 60 days from its incurrence;

(xvi) accrual of interest on Debt otherwise permitted under this Section 7.01, accretion or amortization of original issue discount with respect to Debt otherwise permitted under this Section 7.01 and/or Debt incurred as a result of payment of interest in kind on Debt otherwise permitted under this Section 7.01;

(xvii) Debt or Synthetic Lease Obligations of the Borrower and its Subsidiaries not otherwise permitted by this Section 7.01 incurred after the Closing Date in an aggregate principal amount not to exceed \$10,000,000 at any time outstanding; provided that no Default or Event of Default shall have occurred and be continuing immediately before and immediately after giving effect to such incurrence; and

(xviii) Debt of Foreign Subsidiaries of the Borrower organized and operating in Canada or Mexico incurred after the Closing Date in an aggregate principal amount not to exceed \$1,000,000 at any time outstanding.

Section 7.02 Restriction on Liens. None of the Group Companies will create, incur, assume or permit to exist any Lien on any property or assets (including Equity Interests or other securities of any Person, including any Subsidiary of Holdings) now owned or hereafter acquired by it or on any income or rights in respect of any thereof, except Liens described in any of the following clauses (collectively, "Permitted Liens");

(i) Liens created by the Collateral Documents;

(ii) Liens (other than any Liens imposed by ERISA or pursuant to any Environmental Law) for taxes (including outstanding Chapter 11 taxes), assessments or governmental charges or levies not yet more than 30 days overdue or not required to be paid pursuant to Section 6.05;

(iii) Liens securing the charges, claims, demands or levies of landlords, carriers, warehousemen, mechanics, sellers of goods, carriers and other like persons which were incurred in the ordinary course of business and which (A) secure charges, claims, demands, or levies which are not more than 30 days overdue or not required to be paid pursuant to Section 6.05 or (B) do not, individually or in the aggregate, materially detract from the value of the property or assets which are the subject of such Lien or materially impair the use thereof in the operation of the business of the Borrower or any of its Subsidiaries or (C) which are being contested in good faith by appropriate proceedings diligently pursued, which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to such Lien;

(iv) Liens arising from judgments, decrees or attachments (or securing of appeal bonds with respect thereto) in circumstances not constituting an Event of Default under Section 8.01; provided that no cash or other property (other than proceeds of insurance payable by reason of such judgments, decrees or attachments) the fair value of which exceeds \$5,000,000 is deposited or delivered to secure any such judgment, decree or award, or any appeal bond in respect thereof;

(v) Liens (other than any Liens imposed by ERISA or pursuant to any Environmental Law) not securing Debt or Derivatives Obligations incurred or deposits made in

the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security and other similar obligations incurred in the ordinary course of business;

(vi) Liens (including pledges or deposits) securing obligations in respect of surety bonds (other than appeal bonds), bids, trade contracts, public or statutory obligations, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business;

(vii) pledges or deposits of cash and Cash Equivalents securing deductibles, self-insurance, co-payment, co-insurance, retentions and similar obligations to providers of insurance on the ordinary cause of business;

(viii) zoning restrictions, building codes, easements, rights of way, licenses, reservations, covenants, conditions, waivers, restrictions on the use of property or other minor encumbrances or irregularities of title not securing Debt or Derivatives Obligations which do not, individually or in the aggregate, materially impair the use of any property in the operation or business of Holdings or any of its Subsidiaries or the value of such property for the purpose of such business;

(ix) Permitted Encumbrances;

(x) Liens securing Capital Lease Obligations and Purchase Money Debt permitted to be incurred under Section 7.01(iii) and Liens securing Debt of Foreign Subsidiaries permitted under Section 7.01 (xviii);

(xi) any Lien existing on any asset of any Person at the time such Person becomes a Subsidiary of the Borrower and not created in contemplation of such event;

(xii) any Lien on any asset of any Person existing at the time such Person is merged or consolidated with or into the Borrower or a Subsidiary of the Borrower and not created in contemplation of such event;

(xiii) any Lien existing on any asset prior to the acquisition thereof by the Borrower or a Subsidiary of the Borrower and not created in contemplation of such acquisition;

(xiv) any Lien securing Refinancing Debt in respect of any Debt of the Borrower or any Subsidiary of the Borrower secured by any Lien permitted by clauses (xi), (xii), (xiii) or (xxi) of this Section 7.02; provided that such Debt is not secured by any additional assets;

(xv) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights, in each case incurred in the ordinary course of business;

(xvi) licenses, sublicenses, leases or subleases granted by a Group Company as lessor to third Persons in the ordinary course of business not interfering in any material respect with the business of any Group Company;

(xvii) Liens on (A) incurred premiums, dividends and rebates which may become payable under insurance policies and loss payments which reduce the incurred premiums on such insurance policies and (B) rights which may arise under State insurance guarantee funds

relating to any such insurance policy, in each case securing Debt permitted to be incurred pursuant to Section 7.01(vii);

(xviii) any (A) Lien not securing any Debt, Derivatives Obligations or Synthetic Lease Obligations constituting an interest or title of a licensor, lessor or sublicensor or sublessor under any Operating Lease or license entered into by the Borrower or any of its Subsidiaries in compliance with this Agreement or (B) Lien resulting from the subordination by any such lessor or sublessor of its interest or title under such Operating Lease to any Lien described in subparagraph (viii) above; provided that the holder of such Lien or restriction agrees in writing to recognize the rights of such lessee or sublessee under such Operating Lease;

(xix) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods;

(xx) Liens securing obligations (other than Debt or Derivatives Obligations) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of the Borrower and its Subsidiaries;

(xxi) Liens existing on the Closing Date and listed on Schedule 7.02 hereto; provided that such Liens shall secure only those obligations which they secure on the date hereof (and permitted extensions, renewals and refinancings of such obligations) and shall not subsequently apply to any other property or assets of Holdings and its Subsidiaries (other than accessions to and the proceeds of the property or assets subject to such Liens to the extent provided by the terms thereof on the date hereof);

(xxii) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to a Permitted Business Acquisition;

(xxiii) Liens upon specific items or inventory or other goods and proceeds of the Borrower or any of its Subsidiaries securing such Person's obligations in respect of bankers' acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the shipment or storage of such inventory or other goods; and

(xxiv) Liens deemed to exist in the ordinary course in connection with Cash Equivalents; and

(xxv) other Liens incurred by the Borrower and its Subsidiaries if the aggregate amount of the obligations secured thereby do not exceed \$10,000,000.

Section 7.03 Nature of Business. None of the Group Companies will alter in any material respect the character of the business conducted by such Person as of the Closing Date except that the Borrower and its Subsidiaries may engage in reasonable extensions thereof and in business reasonably related, ancillary or complementary thereto.

Section 7.04 Consolidation, Merger and Dissolution. Except in connection with an Asset Disposition permitted by the terms of Section 7.05, none of the Group Companies will enter into any transaction of merger or consolidation or liquidate, wind up or dissolve itself or its affairs (or suffer any liquidations or dissolutions); provided that:

(i) the Merger shall be permitted;

(ii) any Domestic Subsidiary of the Borrower may merge with and into, or be voluntarily dissolved or liquidated into, the Borrower, so long as (A) the Borrower is the surviving corporation of such merger, dissolution or liquidation, (B) the security interests granted to the Collateral Agent for the benefit of the Finance Parties pursuant to the Collateral Documents in the assets of the Borrower and such Domestic Subsidiary so merged, dissolved or liquidated shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation), (C) no Default or Event of Default shall have occurred and be continuing immediately before or immediately after giving effect to such transaction and (D) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect or as a result of such transaction;

(iii) any Domestic Subsidiary of the Borrower may merge with and into, or be voluntarily dissolved or liquidated into, any other Domestic Subsidiary of the Borrower, so long as (A) in the case of any such merger, dissolution or liquidation involving one or more Subsidiary Guarantors, (y) a Subsidiary Guarantor is the surviving corporation of such merger, dissolution or liquidation, (z) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect of or as a result of such transaction, (B) the security interests granted to the Collateral Agent for the benefit of the Finance Parties pursuant to the Collateral Documents in the assets of each Domestic Subsidiary so merged, dissolved or liquidated and in the Equity Interests of the surviving entity of such merger dissolution or liquidation shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation) and (C) no Default or Event of Default shall have occurred and be continuing immediately before or immediately after giving effect to such transaction;

(iv) any Foreign Subsidiary of the Borrower may be merged with and into, or be voluntarily dissolved or liquidated into, the Borrower or any Subsidiary of the Borrower, so long as (A) in the case of any such merger, dissolution or liquidation involving one or more Subsidiary Guarantors, (y) the Borrower or a Subsidiary Guarantor, as the case may be, is the surviving corporation of any such merger, dissolution or liquidation and (z) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect of or as a result of such transaction, (B) the security interests granted to the Collateral Agent for the benefit of the Finance Parties pursuant to the Collateral Documents in the assets of such Foreign Subsidiary, if any, and the Borrower or such other Subsidiary, as the case may be, and in Equity Interests of the surviving entity of such merger, dissolution or liquidation shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation) and (C) no Default or Event of Default shall have occurred and be continuing immediately before or immediately after giving effect to such transaction; and

(v) the Borrower or any Subsidiary of the Borrower may merge with any Person (other than Holdings) in connection with a Permitted Business Acquisition if (A) in the case of any such merger involving the Borrower, the Borrower shall be the continuing or surviving corporation in such merger, (B) in the case of any such merger involving a Subsidiary Guarantor, such Subsidiary Guarantor, as the case may be, shall be the continuing or surviving corporation in such merger or the continuing or surviving corporation in such merger shall, simultaneously with the consummation of such merger, become a Subsidiary Guarantor having all the responsibilities and obligations of the Subsidiary Guarantor so merged, or (C) the Credit Parties shall cause to be executed and delivered such documents, instruments and certificates as the Lead Arrangers may reasonably request so as to cause the Credit Parties to be in compliance with the terms of Section 6.10 after giving effect to such transactions.

In the case of any merger or consolidation permitted by this Section 7.04 of any Subsidiary of Holdings which is not a Credit Party into a Credit Party, the Credit Parties shall cause to be executed and delivered such documents, instruments and certificates as the Administrative Agent may reasonably request so as to cause the Credit Parties to be in compliance with the terms of Section 6.10 after giving effect to such transaction. Notwithstanding anything to the contrary contained above in this Section 7.04, no action shall be permitted which results in a Change of Control.

Section 7.05 Asset Dispositions. None of the Group Companies will make any Asset Disposition; provided that:

- (i) any Group Company may sell inventory in the ordinary course of business on an arms'-length basis;
- (ii) the Borrower may make any Asset Disposition to any of the Subsidiary Guarantors if (A) the Credit Parties shall cause to be executed and delivered such documents, instruments and certificates as the Administrative Agent or the Collateral Agent may request so as to cause the Credit Parties to be in compliance with the terms of Section 6.10 after giving effect to such Asset Disposition and (B) after giving effect to such Asset Disposition, no Default or Event of Default exists;
- (iii) the Borrower and its Subsidiaries may liquidate or sell Cash Equivalents;
- (iv) the Borrower or any of its Subsidiaries may sell, lease, transfer, assign or otherwise dispose of assets (other than in connection with any Casualty or Condemnation) to any other Person provided that the aggregate fair market value of all property disposed of pursuant to this clause (iv) does not exceed \$3,000,000 in the aggregate in any fiscal year of the Borrower or \$10,000,000 in the aggregate from and after the Closing Date;
- (v) the Borrower or any of its Subsidiaries may dispose of machinery or equipment which will be replaced or upgraded with machinery or equipment put to a similar use and owned, or otherwise used or useful in the ordinary course of business of and owned by such Person; provided that (A) such replacement or upgraded machinery and equipment is acquired within 120 days after such disposition, and (B) upon their acquisition, such replacement assets become subject to the Lien of the Collateral Agent under the Collateral Documents (to the extent in effect immediately prior to such disposition);
- (vi) the Borrower or any of its Subsidiaries may in the ordinary course of business and in a commercially reasonable manner, dispose of obsolete, worn-out or surplus tangible assets and other excess property no longer used or useful in the ordinary course of business;
- (vii) any Group Company may enter into any Sale/Leaseback Transaction not prohibited by Section 7.13;
- (viii) any Subsidiary of the Borrower may sell, lease or otherwise transfer (x) any or all or substantially all of its assets (including any such transaction effected by way of merger or consolidation) to the Borrower or any Wholly-Owned Domestic Subsidiary of the Borrower, so long as (A) the security interests granted to the Collateral Agent for the benefit of the Finance Parties pursuant to the Collateral Documents in such assets shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such sale,

lease or other transfer) and (B) after giving effect to such Asset Disposition, no Default or Event of Default exists, and (y) assets to Foreign Subsidiaries or non-Wholly-Owned Domestic Subsidiaries to the extent permitted by Section 7.06(x);

(ix) any non-Wholly-Owned Domestic Subsidiary or Foreign Subsidiary of the Borrower may sell, lease or otherwise transfer any or all or substantially all of its assets (including any such transactions effected by way of merger or consolidation) to any other non-Wholly-Owned Domestic Subsidiary or Foreign Subsidiary of the Borrower, so long as the security interests granted to the Collateral Agent for the benefit of the Finance Parties pursuant to the Collateral Documents in such assets shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such sale, lease or other transfer);

(x) any Group Company may (A) lease, as lessor or sublessor, or license, as licensor or sublicense, real or personal property (including Intellectual Property) in the ordinary course of business and consistent with past practices and (B) grant options to purchase, lease or acquire real or personal property in the ordinary course of business, so long as the Asset Disposition resulting from the exercise of such option would otherwise be permitted under this Section 7.05;

(xi) any Group Company may dispose of defaulted receivables and similar obligations in the ordinary course of business and not as part of an accounts receivable financing transaction;

(xii) any Group Company may dispose of non-core assets acquired in connection with Permitted Business Acquisitions;

(xiii) any Group Company may make one or more Asset Dispositions involving any or all of the assets described in Schedule 7.05;

(xiv) any Group Company may make one or more Asset Dispositions in connection with a like-kind exchange pursuant to Section 1031 of the Code; provided that the Borrower shall have delivered to the Administrative Agent a Pro-Forma Compliance Certificate demonstrating that upon giving effect on a Pro-Forma Basis to such transaction, the Credit Parties will be in compliance with all of the financial covenants set forth in Section 7.17(a) as of the last day of the most recent period of four consecutive fiscal quarters of Holdings which precedes or ends on the date of such transaction and with respect to which the Administrative Agent has received the consolidated financial information required under Section 6.01(a) or (b) and the officer's certificate required under Section 6.01(c);

(xv) any Group Company may sell or dispose of Equity Interests in its Subsidiaries to qualify directors where required by applicable law or to satisfy other requirements of applicable law with respect to the ownership of Equity Interests of Foreign Subsidiaries; and

(xvi) any Group Company may make any other Asset Disposition; provided that (A) at least 75% of the consideration therefor is cash or Cash Equivalents; (B) if such transaction is a Sale/Leaseback Transaction, such transaction is permitted by Section 7.01 and Section 7.13; (C) such transaction does not involve the sale or other disposition of a minority Equity Interest in any Group Company; (D) the aggregate fair market value of all assets sold or otherwise disposed of by the Group Companies in all such transactions in reliance on this clause (xvi) shall not exceed \$10,000,000 in the aggregate from and after the Closing Date; and (E) no

Default or Event of Default shall have occurred and be continuing immediately before or immediately after giving effect to such transaction.

Upon consummation of an Asset Disposition permitted under this Section 7.05, the Lien therein created (but not the Lien on any proceeds thereof) under the Collateral Documents shall be automatically released and the Administrative Agent shall (or shall cause the Collateral Agent to) (to the extent applicable) deliver to the Borrower, upon the Borrower's request and at the Borrower's expense, such documentation as is reasonably necessary to evidence the release of the Collateral Agent's security interests, if any, in the assets being disposed of, including amendments or terminations of Uniform Commercial Code Financing Statements, if any, the return of stock certificates, if any, and the release of any Subsidiary being disposed of in its entirety from all of its obligations, if any, under the Senior Finance Documents.

Section 7.06 Investments.

(a) Investments. None of the Group Companies will hold, make or acquire, any Investment in any Person, except the following:

(i) Investments existing on the date hereof in Persons which are Subsidiaries on the date hereof;

(ii) Holdings, the Borrower, Intermediate Holdings or any Subsidiary of the Borrower may invest in cash and Cash Equivalents;

(iii) Holdings or Intermediate Holdings may acquire and hold obligations of one or more officers or other employees of Holdings or any of its Subsidiaries in connection with such officers' or employees' acquisition of Equity Interests of Holdings or Intermediate Holdings, so long as no cash is paid by Holdings or any of its Subsidiaries to such officers or employees in connection with the acquisition of any such obligations or such cash is immediately reinvested in such Equity Interests;

(iv) the Borrower and any Subsidiary of the Borrower may acquire and hold receivables not constituting Debt owing to them, if created or acquired in the ordinary course of business;

(v) the Borrower and each Subsidiary of the Borrower may acquire and own Investments (including Debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(vi) deposits by the Borrower or any Subsidiary of the Borrower made in the ordinary course of business consistent with past practices to secure the performance of leases shall be permitted;

(vii) Holdings may make equity contributions to the capital of Intermediate Holdings which may make equity contributions to the capital of the Borrower and both Holdings and Intermediate Holdings may incur Guaranty Obligations permitted under Section 7.01(viii);

(viii) Holdings and Intermediate Holdings may hold (i) the Trust Common Securities and (ii) promissory notes issued by Borrower and Intermediate Holdings (as applicable);

(ix) the Borrower may make Investments in any of its Wholly-Owned Domestic Subsidiaries and any Subsidiary of the Borrower may make Investments in the Borrower or any Wholly-Owned Domestic Subsidiary of the Borrower; provided that (A) each item of intercompany Debt evidencing intercompany loans and advances made by a Foreign Subsidiary or a non-Wholly-Owned Domestic Subsidiary to the Borrower or a Wholly-Owned Domestic Subsidiary of the Borrower shall be evidenced by a promissory note in the form of Exhibit G hereto containing the subordination provisions set forth in Exhibit H hereto and (B) each promissory note evidencing intercompany loans and advances payable to a Credit Party shall be pledged to the Collateral Agent pursuant to the Collateral Documents;

(x) the Borrower and its Subsidiaries may make Investments in any Foreign Subsidiary organized and operating in Canada and Mexico or any non-Wholly-Owned Domestic Subsidiary of the Borrower (A) in the case of Investments by the Borrower or any Wholly-Owned Domestic Subsidiary of the Borrower, in an aggregate amount (determined without regard to any write-downs or write-offs of any such Investments constituting Debt) and together with the fair market value of all assets transferred pursuant to Section 7.05(viii) at any one time outstanding not exceeding \$5,000,000 and (B) to the extent such Investments arise from the sale of inventory in the ordinary course of business by the Borrower or such Subsidiary to such Foreign Subsidiary or non-Wholly-Owned Domestic Subsidiary for resale by such Foreign Subsidiary or non-Wholly-Owned Domestic Subsidiary (including any such Investments resulting from the extension of the payment terms with respect to such sales); provided that each promissory note evidencing intercompany loans and advances (other than promissory notes (A) issued by Foreign Subsidiaries of the Borrower to the Borrower or any of its Domestic Subsidiaries or (B) held by Foreign Subsidiaries of the Borrower, in each case except to the extent provided in Section 6.10(d) or non-Wholly-Owned Subsidiaries of the Borrower who are not and are not required to be Credit Parties) shall be pledged to the Collateral Agent pursuant to the Collateral Documents;

(xi) so long as no Default or Event of Default is then in existence or would otherwise arise therefrom, the Borrower may make Investments in Holdings and Intermediate Holdings provided that (A) all proceeds thereof are applied by Holdings or passed on by Intermediate Holdings to Holdings solely for the purposes of Section 7.08(d); (B) no such Investment shall be made if an interest payment in respect of the Junior Debentures could not, but for such Investment, be made in accordance with Section 7.08(d); and (C) each item of intercompany Debt evidencing intercompany loans and advances made by the Borrower to Holdings or Intermediate Holdings shall be evidenced by a promissory note in the form of Exhibit G hereto containing the subordination provisions set forth in Exhibit H hereto;

(xii) the Borrower and its Subsidiaries may make transfers of assets to the Borrower and its Subsidiaries in accordance with Section 7.05(viii) and (ix) and in connection with mergers and consolidations permitted under Section 7.04;

(xiii) the Borrower and its Subsidiaries may purchase inventory, machinery, equipment and other assets in the ordinary course of business;

(xiv) the Borrower and its Subsidiaries may make expenditures in respect of Permitted Business Acquisitions;

(xv) the Borrower or any of its Subsidiaries may make loans and advances to employees of Holdings and its Subsidiaries for moving and travel and other similar expenses, in each case in the ordinary course of business, in an aggregate principal amount not to exceed

\$250,000 at any one time outstanding (determined without regard to any write-downs or write-offs of such loans and advances);

(xvi) the Borrower or any of its Subsidiaries may make loans and advances to Holdings and Intermediate Holdings and Intermediate Holdings may make loans to Holdings for the purposes and in the amounts necessary to make payments described in Section 7.07;

(xvii) Holdings and Intermediate Holdings may redeem or repurchase Equity Interests to the extent permitted by Section 7.07;

(xviii) the Borrower and its Subsidiaries may make Investments in Permitted Joint Ventures in an aggregate amount (determined without regard to any write-downs or write-offs of any such Investments constituting Debt) at any one time outstanding not exceeding \$5,000,000;

(xix) Investments existing on the date hereof and identified on Schedule 7.06;

(xx) Investments arising out of the receipt by the Borrower or any of its Subsidiaries of noncash consideration for the sale of assets permitted under Section 7.05;

(xxi) Investments resulting from pledges and deposits specifically referred to in Section 7.02; and

(xxii) other Investments not otherwise permitted by this Section 7.06 in an aggregate amount (determined without regard to any write-downs or write-offs of any such Investments constituting Debt but excluding any portion thereof funded with proceeds of an Qualifying Equity Issuance) at any time outstanding not exceeding the sum of (A) \$5,000,000 plus (B) an amount, not exceeding \$5,000,000 in the aggregate, equal to that portion of Excess Cash Flow for the fiscal years ended after the Closing Date, if any, not required to be used to prepay the Loans or Cash Collateralize LC Obligations in accordance with Section 2.09;

provided that no Group Company may make or own any Investment in Margin Stock.

(b) Limitation on the Creation of Subsidiaries No Group Company will establish, create or acquire after the Closing Date any Subsidiary; provided that the Borrower and its Subsidiaries shall be permitted to establish, create or acquire Subsidiaries so long as (i) at least 5 days' prior written notice thereof is given to the Administrative Agent, (ii) the Investment resulting from such establishment, creation or acquisition is permitted pursuant to Section 7.06(a) above, (iii) the capital stock or other equity interests of such new Subsidiary (other than a Foreign Subsidiary, except to the extent otherwise required pursuant to Section 6.10(d)) is pledged pursuant to, and to the extent required by, the Pledge Agreement and the certificates representing such interests, together with transfer powers duly executed in blank, are delivered to the Collateral Agent, (iv) such new Subsidiary (other than a Foreign Subsidiary, except to the extent otherwise required pursuant to Section 6.10(d)) executes a counterpart of the Accession Agreement, the Guaranty, the Security Agreement and the Pledge Agreement to the extent required by Section 6.10(b), and (v) such new Subsidiary, to the extent requested by the Administrative Agent, takes all other actions required pursuant to Section 6.10.

Section 7.07 Restricted Payments, etc. None of the Group Companies will declare or pay any Restricted Payments (other than Restricted Payments payable solely in Equity Interests (exclusive of Debt Equivalents) of such Person), except that:

- (i) any Wholly-Owned Subsidiary of the Borrower may make Restricted Payments to the Borrower or to any Wholly-Owned Subsidiary of the Borrower;
- (ii) any non-Wholly-Owned Subsidiary of the Borrower may make Restricted Payments to the Borrower or to any Wholly-Owned Subsidiary of the Borrower or ratably to all holders of its outstanding Equity Interests;
- (iii) Holdings and Intermediate Holdings may redeem or repurchase Equity Interests (or Equity Equivalents) or to make payments on notes issued in connection with the prior redemption or purchase of such Equity Interests and permitted pursuant to Section 7.01(xii) from (A) officers, employees and directors of any Group Company (or their estates, spouses or former spouses) upon the death, permanent disability, retirement or termination of employment of any such Person or otherwise or (B) other holders of Equity Interests or Equity Equivalents in Holdings and Intermediate Holdings, so long as the purpose of such purchase is to acquire stock for reissuance to new officers, employees and directors (or their estates) of any Group Company, to the extent so reissued within 12 months of any such purchase; provided that in all such cases (A) no Default or Event of Default is then in existence or would otherwise arise therefrom, (B) the aggregate amount of all cash distributed by the Borrower directly or indirectly to Holdings and Intermediate Holdings in respect of all such shares so redeemed or repurchased (or otherwise spent by Holdings and Intermediate Holdings) does not exceed \$2,000,000 in any fiscal year of Holdings (with unused amounts being carried forward to succeeding fiscal years) or \$10,000,000 in the aggregate from and after the Closing Date, and provided further that Holdings and Intermediate Holdings may purchase, redeem or otherwise acquire Equity Interests and Equity Equivalents of Holdings and Intermediate Holdings pursuant to this clause (iii) without regard to the restrictions set forth in the first proviso above for consideration consisting of the proceeds of key man life insurance obtained for the purposes described in this clause (iii);
- (iv) so long as no Default or Event of Default is then in existence or would otherwise arise therefrom, the Borrower may make cash Restricted Payments, directly or indirectly, to Holdings and Intermediate Holdings, if Holdings and Intermediate Holdings promptly use such proceeds for the purposes described in clause (iii) above;
- (v) the Borrower and Intermediate Holdings may make cash Restricted Payments, directly or indirectly, to Intermediate Holdings or Holdings (as the case may be) for the purpose of paying, and in amounts not to exceed the amount necessary to pay, (A) the then currently due fees and expenses of Holdings' counsel, accountants and other advisors and consultants, and other operating and administrative expenses of Holdings (including employee and compensation expenditures and other similar costs and expenses) incurred in the ordinary course of business that are for the benefit of, or are attributable to, or are related to, including the financing or refinancing of, Holdings' Investment in the Borrower and its Subsidiaries, (B) the then currently due fees and expenses of Holdings' independent directors and observers and (C) the then currently due taxes payable by Holdings solely on account of the income of Holdings related to its Investment in the Borrower and its Subsidiaries and the reasonable expenses of preparing returns reflecting such taxes; provided that Holdings agrees to be obligated to contribute to the Borrower any refund Holdings receives relating to any such taxes and (D) so long as no Default or Event of Default is then in existence or would arise therefrom, other fees and expenses permitted under Section 7.09;
- (vi) the Borrower may pay directly or indirectly to Intermediate Holdings or Holdings the amount that Holdings is required to pay for franchise, federal, state, local or other taxes as the common parent of an affiliated group (within the meaning of Section 1504 of the

Code) and quarterly or annually for other taxes incurred by Intermediate Holdings or Holdings; provided that (A) such payments with respect to income taxes may be made only in respect of the period during which the Borrower is consolidated with Holdings for purposes of the payment of such taxes and (B) no such payment by the Borrower may be paid until receipt by the Administrative Agent of a certificate of the chief financial officer or chief accounting officer of the Borrower in form and substance acceptable to the Administrative Agent demonstrating compliance with the foregoing provisions (such payments being herein referred to as (“Permitted Tax Dividends”).

(vii) so long as no Default or Event of Default is then in existence or would otherwise arise therefrom, the Borrower may make Restricted Payments to Holdings, directly or indirectly, provided that (A) all proceeds thereof are applied by Holdings solely for the purposes of Section 7.08(d); and (B) no such Restricted Payment shall be made if an interest payment in respect of the Junior Debentures could not, but for such Restricted Payment, be made in accordance with Section 7.08(d);

(viii) Holdings and its Subsidiaries may make Restricted Payments made with Net Cash Proceeds of one or more Qualifying Equity Issuances within three Business Days following the receipt thereof; provided that, after giving effect to such Restricted Payment, no Change of Control shall have occurred;

(ix) Holdings and Intermediate Holdings may make noncash repurchases of Equity Interests deemed to occur upon exercise of stock options if such Equity Interests represent a portion of the exercise price of such options; and

(x) cash payments by Holdings and Intermediate Holdings in lieu of the issuance of fractional shares upon exercise or conversion of Equity Equivalents.

Section 7.08 Prepayments of Debt, etc.

(a) Amendments of Agreements. None of the Group Companies will, or will permit any of their respective Subsidiaries to, after the issuance thereof, amend, waive or modify (or permit the amendment, waiver or modification of) any of the terms, agreements, covenants or conditions of or applicable to (i) the Subordinated Debentures Documents or the Junior Debentures or (ii) any other Subordinated Debt issued by such Group Company if such amendment, waiver or modification would add or change any terms, agreements, covenants or conditions in any manner adverse to any Group Company, or shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate applicable thereto or change any subordination provision thereof.

(b) Prohibition Against Certain Payments of Principal and Interest of Other Debt. Except as provided in subsection (c) or (d) below, none of the Group Companies will (i) directly or indirectly, redeem, purchase, prepay, retire, defease or otherwise acquire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Debt, or set aside any funds for such purpose, whether such redemption, purchase, prepayment, retirement or acquisition is made at the option of the maker or at the option of the holder thereof, and whether or not any such redemption, purchase, prepayment, retirement or acquisition is required under the terms and conditions applicable to such Debt or (ii) make any interest or other payment in respect of Subordinated Debentures, the Junior Debentures or any other Subordinated Debt.

(c) Certain Allowed Payments in Respect of Subordinated Debt. Holdings, the Borrower and any of its Subsidiaries may (i) make interest payments as and when due in respect of the Subordinated Debentures and any other Subordinated Debt (other than the Junior Debentures) of the Borrower entered into in compliance with Section 7.01; and other fees, costs and expenses in connection with the Subordinated Debentures as permitted by the Subordination Agreement; (ii) refinance Subordinated Debt to the extent expressly permitted under Section 7.01, in each case other than any such payments prohibited by the subordination provisions thereof; (iii) exchange Subordinated Debt of Holdings or any of its Subsidiaries for Equity Interests issued by Holdings or Intermediate Holdings (provided that Subordinated Debt of Holdings may be exchanged for Equity Interests of Holdings only); and (iv) permit the cancellation or forgiveness of Subordinated Debt of Holdings or any of its Subsidiaries.

(d) Allowed Payments in Respect of the Junior Debentures.

(i) Holdings may make (A) interest payments as and when due, and (B) payments of deferred interest (or a portion thereof), in respect of the Junior Debentures, in each case, if (x) there is no Event of Default existing under Section 8.01(a) of the Subordinated Debenture continuing unremedied or unwaived, and (y) Holdings shall have delivered to the Administrative Agent a Pro-Forma Compliance Certificate demonstrating that upon giving effect to such payments on a Pro-Forma Basis, including as if such payments under clause (A) and (B) were made in the prior period of calculation (with pro-forma adjustments satisfactory to the Administrative Agent), the Fixed Charge Coverage Ratio, as of the last day of the period of four consecutive fiscal quarters of Holdings, taken as a single accounting period, most recent period of four consecutive fiscal quarters of Holdings which precedes or ends on the date of such payment, will not be less than the ratio set forth below opposite the period during which such day occurs:

<u>Fiscal Quarters Ended During</u>	<u>Ratio</u>
Effective Date through 12/31/06	1.20 to 1.0
1/01/07 through 12/31/07	1.25 to 1.0
1/01/08 through 12/31/08	1.30 to 1.0
1/01/09 through 12/31/09	1.35 to 1.0
1/01/10 through 3/31/11	1.40 to 1.0

(ii) In the event that Holdings cannot make a payment pursuant to the terms of paragraph (i) above, Holdings will within 5 Business Days after the calculation under clause (i) above prior to the relevant scheduled interest payment date under the Junior Debentures serve a notice on the Junior Debenture Holders of an Extension Period for a period of not less than six months (as such term is defined in the Junior Debentures Indenture) (an "Extension Notice"), with a copy of such notice, certified as true and correct, to be simultaneously delivered to the Administrative Agent; and

(iii) Holdings hereby irrevocably appoints the Administrative Agent as its attorney-in-fact (with full power of substitution and delegation) in its name and on its behalf to serve an Extension Notice on the Junior Debentures Holders, in the event that Holdings does not deliver an Extension Notice to the Junior Debentures Holders and the Administrative Agent within the applicable period as prescribed in paragraph (ii) above.

Section 7.09 Transactions with Affiliates. None of the Group Companies will engage in any transaction or series of transactions with any Affiliate of Holdings other than:

(i) the payment of management and other fees when due, pursuant to the Management Agreement and OTP Side Letters, in each case, as in effect, on the date hereof; provided that no such payment may be made if the Administrative Agent shall have notified the Borrower (which notice may be provided by electronic mail) that a Default or Event of Default shall have occurred and be continuing immediately before or immediately after giving effect to such payment (it being understood and agreed that any payment which cannot be made when due as a result of a Default or an Event of Default shall continue to accrue and may be made upon the cure or waiver of such Default or Event of Default or otherwise with the consent of the Required Lenders);

(ii) reimbursement of reasonable out-of-pocket expenses and indemnities pursuant to the Management Agreement and OTP Side Letters;

(iii) transfers of assets to any Credit Party other than Holdings permitted by Section 7.05;

(iv) transactions expressly permitted by Section 7.01, Section 7.04, Section 7.05, Section 7.06 or Section 7.07;

(v) normal compensation, indemnities and reimbursement of reasonable expenses of officers, directors and board observers;

(vi) other transactions in existence on the Closing Date to the extent disclosed in Schedule 7.09;

(vii) any transaction entered into among the Borrower and its Wholly-Owned Subsidiaries or among such Wholly-Owned Subsidiaries;

(viii) preemptive rights held by the Investor Group in respect of the Equity Interests of Holdings or Intermediate Holdings; and

(ix) so long as no Default or Event of Default has occurred and is continuing, other transactions which are engaged in by the Borrower or any of its Subsidiaries in the ordinary course of its business on terms and conditions as favorable to such Person as would be obtainable by it in a comparable arms'-length transaction with an independent, unrelated third party.

Notwithstanding the foregoing, none of Holdings or any of its Subsidiaries will enter into any management, consulting or similar agreement or arrangement other than the Management Agreement with, or otherwise pay any professional, consulting, management or similar fees to or for the benefit of, the Sponsor Group or its successors or transferees, except for payments pursuant to the Management Agreement permitted under clause (i), (ii), (vi) or (viii) above.

Section 7.10 Fiscal Year; Organizational and Other Documents. None of the Group Companies will (i) change its fiscal year or (ii) consent to any amendment, modification or supplement that is adverse in any respect to the Lenders to its articles or certificate of incorporation, bylaws (or analogous organizational documents), the Acquisition Documents, the Management Agreement or any agreement entered into by it with respect to its Equity Interests (including the Capitalization Documents and the Stockholder Agreements), in each case as in effect on the Closing Date. The Borrower will cause the Group Companies to promptly provide the Lenders with copies of all amendments to the foregoing documents and instruments as in effect as of the Closing Date.

Section 7.11 Restrictions with Respect to Intercorporate Transfers None of the Group Companies will create or otherwise cause or permit to exist any consensual encumbrance or restriction which prohibits or otherwise restricts (i) the ability of any such Subsidiary to (A) make Restricted Payments or pay any Debt owed to the Borrower or any Subsidiary of the Borrower, (B) pay Debt or other obligations owed to any Credit Party, (C) make loans or advances to the Borrower or any Subsidiary of the Borrower, (D) transfer any of its properties or assets to the Borrower or any Subsidiary of the Borrower or (E) act as a Subsidiary Guarantor and pledge its assets pursuant to the Senior Finance Documents or any renewals, refinancings, exchanges, refundings or extensions thereof or (ii) the ability of Holdings or any Subsidiary of Holdings to create, incur, assume or permit to exist any Lien upon its property or assets whether now owned or hereafter acquired to secure the Senior Obligations, except in each case for prohibitions or restrictions existing under or by reason of:

- (i) this Agreement and the other Senior Finance Documents;
- (ii) restrictions in effect on the date of this Agreement contained in the Subordinated Debentures Documents or the Junior Debentures Documents, all as in effect on the date of this Agreement, and, if such Debt is renewed, extended or refinanced, restrictions in the agreements governing the renewed, extended or refinancing Debt (and successive renewals, extensions and refinancings thereof) if such restrictions are no more restrictive than those contained in the agreements governing the Debt being renewed, extended or refinanced;
- (iii) customary non-assignment provisions with respect to contracts, leases or licensing agreements entered into by the Borrower or any of its Subsidiaries, in each case entered into in the ordinary course of business and consistent with past practices;
- (iv) any restriction or encumbrance with respect to any asset of the Borrower or any of its Subsidiaries or a Subsidiary of the Borrower imposed pursuant to an agreement which has been entered into for the sale or disposition of such assets or all or substantially all of the capital stock or assets of such Subsidiary, so long as such sale or disposition is permitted under this Agreement;
- (v) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business in connection with Permitted Joint Ventures;
- (vi) restrictions on cash and other deposits or net worth imposed by customers or suppliers in the ordinary course of business and consistent with past practice;
- (vii) any restriction applicable to an acquired Subsidiary of the Borrower pursuant to agreements in effect on the date such Subsidiary became a Subsidiary of the Borrower and otherwise permitted to remain in effect hereunder; provided that such restrictions apply only to such Subsidiary;
- (viii) Liens permitted under Section 7.02 and any documents or instruments governing the terms of any Debt or other obligations secured by any such Liens; provided that such prohibitions or restrictions apply only to the assets subject to such Liens; and
- (ix) documents evidencing indebtedness incurred by Foreign Subsidiaries to the extent permitted under Section 7.01.

Section 7.12 Ownership of Subsidiaries; Limitations on Holdings and the Borrower

(a) Holdings and the Borrower will not (i) permit any Subsidiary of the Borrower to issue Equity Interests to any Person, except (A) the Borrower or any Wholly-Owned Subsidiary of the Borrower, (B) to qualify directors where required by applicable Law or to satisfy other requirements of applicable Law with respect to the ownership of Equity Interests of Foreign Subsidiaries or (C) in the case of non-Wholly-Owned Subsidiaries of the Borrower, ratably to all holders of its outstanding Equity Interests or (ii) permit any non Wholly Owned Subsidiary of the Borrower to issue any shares of Preferred Stock.

(b) Each of Holdings and Intermediate Holdings will not (i) hold any material assets other than the Trust Common Securities, the Equity Interests of Intermediate Holdings and the Borrower respectively and cash or Cash Equivalents expressly permitted to be received and held by it from time to time in accordance with this Agreement, (ii) have any material liabilities other than (A) liabilities under the Senior Finance Documents, the Subordinated Debentures, the Junior Debentures or the Management Put Rights and other obligations or liabilities expressly permitted to be incurred by it pursuant to Section 7.01 and (B) tax and accrued liabilities and expenses in the ordinary course of business or (iii) engage in any business activity other than (A) owning the Trust Common Securities, the common stock of Intermediate Holdings and the Borrower, respectively (including purchasing additional shares of common stock after the Closing Date), and activities incidental or related thereto or to the maintenance of the corporate existence of Holdings and Intermediate Holdings, respectively, or compliance with applicable law, (B) acting as a Guarantor under its Guaranty and pledging its assets to the Collateral Agent, for the benefit of the Lenders, pursuant to the Collateral Documents to which it is a party, (C) acting as a guarantor in respect of the Debt arising under (x) the Subordinated Debentures Indenture and the Subordinated Debentures, and (y) the Trust Preferred Securities, and other Guaranty Obligations expressly permitted to be incurred by it pursuant to Section 7.01 and (D) issuing its own Capital Stock (other than Debt Equivalents).

(c) Holdings and Intermediate Holdings will not permit any Person other than (i) Holdings to hold any Equity Interests comprising of common stock of Intermediate Holdings and (ii) Intermediate Holdings to hold Equity Interests or Equity Equivalents of the Borrower.

Section 7.13 Sale and Leaseback Transactions. None of the Group Companies will directly or indirectly become or remain liable as lessee or as guarantor or other surety with respect to any lease (whether an Operating Lease or a Capital Lease) of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (i) which such Group Company has sold or transferred or is to sell or transfer to any other Person which is not a Group Company or (ii) which such Group Company intends to use for substantially the same purpose as any other property which has been sold or is to be sold or transferred by such Group Company to another Person which is not a Group Company in connection with such lease; provided, however, that the Group Companies may enter into any Sale/Leaseback Transaction if (i) after giving effect on a Pro-Forma Basis to such Sale/Leaseback Transaction, the aggregate outstanding Attributable Debt in respect of all Sale/Leaseback Transactions does not exceed \$5,000,000 and the Borrower shall be in compliance with all other provisions of this Agreement, including Section 7.01 and Section 7.02, (B) the gross cash proceeds of any such Sale/Leaseback Transaction are at least equal to the fair market value of such property (as determined by the Board of Directors, whose determination shall be conclusive if made in good faith) and (C) the Net Cash Proceeds are applied as set forth in Section 2.09(b)(iv) to the extent required therein.

Section 7.14 Capital Expenditures.

(a) None of the Group Companies will make any Consolidated Capital Expenditures, except that during any of the fiscal years set forth below, the Borrower and its Subsidiaries may make Consolidated Capital Expenditures so long as the aggregate amount of such Consolidated Capital Expenditures (other than Consolidated Capital Expenditures made with the Net Cash Proceeds of one or more Qualified Equity Issuances) does not exceed the amount indicated opposite such period:

<u>Period</u>	<u>Amount</u>
2006	\$15,000,000
2007	\$16,000,000
2008	\$16,000,000
2009	\$17,000,000
2010	\$17,000,000
2011	\$18,000,000

(b) To the extent that Consolidated Capital Expenditures permitted under subsection (a) above for any period set forth above are less than the applicable amount specified in the table in subsection (a) above, the difference may be carried forward and utilized to make Consolidated Capital Expenditures during succeeding fiscal years so long as the aggregate amount of Consolidated Capital Expenditures made during any fiscal year does not exceed 120% of the applicable amount set forth for such year in the table above.

(c) Notwithstanding the foregoing, the Borrower and its Subsidiaries may make Consolidated Capital Expenditures (which Consolidated Capital Expenditures will not be included in any determination under subsection (a) above) with the Net Cash Proceeds of Asset Dispositions, to the extent such Net Cash Proceeds are not required to be applied to repay Loans or Cash Collateralize Letter of Credit Liabilities pursuant to Section 2.09(b)(iii).

Section 7.15 Additional Negative Pledges. None of the Group Companies will enter into, assume or become subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for an obligation if security is given for some other obligation, except (i) pursuant to this Agreement and the other Senior Finance Documents, the Subordinated Debentures Indenture and any Debt consisting of Refinancing Debt issued to refinance all or any portion of the foregoing, (ii) pursuant to any document or instrument governing Capital Lease Obligations or Purchase Money Debt incurred pursuant to Section 7.01 if any such restriction contained therein relates only to the assets or assets acquired in connection therewith, (iii) pursuant to any Derivatives Agreement entered into pursuant to Section 7.01(vi), (iv) pursuant to any document or instrument governing Debt incurred by Foreign Subsidiaries and permitted by Section 7.01, (v) pursuant to any documents or agreements creating any Lien referred to in Section 7.02(xvii) if such restriction contained therein relates only to the incurred premiums, dividends, rebates and other rights permitted to be subject to such Lien in accordance with Section 7.02(xvii), (vi) any documents or agreements creating any Lien referred to in Section 7.02(vi) if such restriction contained therein relates only to the property of assets subject to the surety bond or similar obligation permitted to be secured thereby pursuant to Section 7.02(vi), (vii) pursuant to an agreement which has been entered into by the Borrower or any of its Subsidiaries for the sale or disposition of any assets of the Borrower or such Subsidiary or of any Subsidiary of the Borrower if such restriction contained therein relates only to the Subsidiary or its assets which is the subject of the sale provided for therein, and (viii) pursuant to a joint venture or other similar agreement entered into in the ordinary course of business in connection with Permitted Joint Ventures so long as any such restriction

contained therein relates only to the assets of, or the interest of the Borrower and its Subsidiaries in, such Permitted Joint Venture.

Section 7.16 Impairment of Security Interests. None of the Group Companies will (i) take or omit to take any action which action or omission could reasonably be expected to materially impair the security interests in favor of the Collateral Agent with respect to the Collateral or (ii) grant to any Person (other than the Collateral Agent pursuant to the Collateral Documents) any interest whatsoever in the Collateral, except for Permitted Liens.

Section 7.17 Financial Covenants.

(a) **Leverage Ratio.** The Leverage Ratio as of the last day of the most recently ended fiscal quarter of Holdings ending on the last day of any calendar quarter ending during any period described below will not be greater than the ratio set forth below opposite the period during which such calendar quarter ends:

<u>Calendar Quarters Ended During</u>	<u>Ratio</u>
Effective Date through 9/30/06	4.50 to 1.0
10/01/06 through 6/30/07	4.25 to 1.0
7/01/07 through 6/30/08	4.00 to 1.0
7/01/08 through 9/30/08	3.75 to 1.0
10/01/08 through 12/31/08	3.50 to 1.0
1/01/09 through 12/31/09	3.25 to 1.0
1/01/10 through 12/31/10	2.75 to 1.0
1/01/11 through 3/31/11	2.50 to 1.0

(b) **Interest Coverage Ratio.** The Interest Coverage Ratio as of the last day of the most recently ended fiscal quarter of Holdings and its Consolidated Subsidiaries ending on or about the last day of any calendar quarter ending during any period described below, in each case for the period of four consecutive fiscal quarters of the Borrower and its Consolidated Subsidiaries then ended, taken as a single accounting period, will not be less than the ratio set forth below opposite the period during which such calendar quarter ends:

<u>Calendar Quarters Ended During</u>	<u>Ratio</u>
Effective Date through 3/31/11	2.50 to 1.0

(c) **Fixed Charge Coverage Ratio.** The Fixed Charge Coverage Ratio as of the last day of the most recently ended fiscal quarter of Holdings ending on or about the last day of any calendar quarter ending during any period described below, in each case for the period of four consecutive fiscal quarters of Holdings then ended, taken as a single accounting period will not be less than the ratio set forth below opposite the period during which such calendar quarter ends:

<u>Calendar Quarters Ended During</u>	<u>Ratio</u>
Effective Date through 3/31/11	1.15 to 1.0

Section 7.18 No Other "Designated Senior Debt". None of Holdings or the Borrower shall designate, or permit the designation of, any Debt (other than under this Agreement and the

other Finance Documents) as “Designated Senior Debt” or any other similar term as such term is commonly used for the purpose of the definition of the same or the subordination provisions contained in the Subordinated Debentures Indenture, the Junior Debentures Indenture or any indenture governing any Subordinated Debt permitted under Section 7.01.

Section 7.19 Independence of Covenants. All covenants contained herein shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that such action or condition would be permitted by an exception to, or otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default if such action is taken or condition exists.

ARTICLE VIII DEFAULTS

Section 8.01 Events of Default. An Event of Default shall exist upon the occurrence of any of the following specified events or conditions (each an “Event of Default”):

(a) Payment. Any Credit Party shall:

(i) default in the payment when due (whether by scheduled maturity, acceleration or otherwise) of any principal of any of the Loans or any LC Disbursements; or

(ii) default, and such default shall continue for five or more Business Days, (A) in the payment when due of any interest on the Loans, or (B) after receipt of a notice of a default with respect thereto, in the payment of any fees or other amounts owing hereunder, under any of the other Senior Finance Documents or in connection herewith.

(b) Representations. Any representation, warranty or statement made or deemed to be made by any Credit Party herein, in any of the other Senior Finance Documents, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove untrue in any material respect on the date as of which it was made or deemed to have been made.

(c) Covenants. Any Credit Party shall:

(i) default in the due performance or observance of any term, covenant or agreement contained in Sections 6.01(a), (e) or (j), 6.08, 6.11 or Article VII;

(ii) default in the due performance or observance of any term, covenant or agreement contained in Sections 6.01(b) or (c) and such default shall continue unremedied for a period of five Business Days after the earlier of an executive officer of a Credit Party becoming aware of such default or notice thereof given by the Administrative Agent; or

(iii) default in the due performance or observance by it of any term, covenant or agreement contained in Section 6.01(d), (f), (g), (h) or (i) and such default shall continue unremedied for a period of ten Business Days after the earlier of an executive officer of a Credit Party becoming aware of such default or notice thereof given by the Administrative Agent; or

(iv) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in subsections (a), (b), (c)(i), (c)(ii) or (c)(iii) of this Section 8.01) contained in this Agreement and such default shall continue unremedied for a

period of 30 days after the earlier of an executive officer of a Credit Party becoming aware of such default or notice thereof given by the Administrative Agent.

(d) Other Senior Finance Documents. (i) Any Credit Party shall default in the due performance or observance of any term, covenant or agreement in any of the other Senior Finance Documents and such default shall continue unremedied for a period of 30 days after the earlier of an executive officer of a Credit Party becoming aware of such default or notice thereof given by the Administrative Agent or (ii) except pursuant to the terms thereof, any Senior Finance Document shall fail to be in full force and effect or any Credit Party shall so assert.

(e) Cross-Default.

(i) any Group Company (A) fails to make payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise but after giving effect to all applicable grace periods), regardless of amount, in respect of any Debt, Guaranty Obligation or Synthetic Lease Obligations (other than in respect of (x) Debt outstanding under the Senior Finance Documents and (y) Derivatives Agreements) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$5,000,000, (B) fails to perform or observe any other condition or covenant, or any other event shall occur or condition shall exist, under any agreement or instrument relating to any such Debt, Guaranty Obligation or Synthetic Lease Obligations, if the effect of such failure, event or condition is to cause, or to permit the holder or holders or beneficiary or beneficiaries of such Debt, Guaranty Obligation or Synthetic Lease Obligations (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, such Debt or Synthetic Lease Obligations to be declared to be due and payable prior to its stated maturity or such Guaranty Obligation to become payable, or cash collateral in respect thereof to be demanded or (C) shall be required by the terms of such Debt, Guaranty Obligation or Synthetic Lease Obligation to offer to prepay or repurchase such Debt or Synthetic Lease Obligation or the primary Debt underlying such Guaranty Obligation (or any portion thereof) prior to the stated maturity thereof; or

(ii) there occurs under any Derivatives Agreement or Derivatives Obligation an Early Termination Date (as defined in such Derivatives Agreement) resulting from (A) any event of default under such Derivatives Agreement as to which any Group Company is the Defaulting Party (as defined in such Derivatives Agreement) or (B) any Termination Event (as so defined) as to which any Group Company is an Affected Party (as so defined), and, in either event, the Derivatives Termination Value owed and not paid within 10 Business Days of when due by a Group Company as a result thereof is greater than \$5,000,000.

(f) Insolvency Events. (i) Any Group Company (other than an Insignificant Subsidiary) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing or (ii) an involuntary case or other proceeding shall be commenced against any Group Company (other than an Insignificant Subsidiary) seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any

substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days, or any order for relief shall be entered against any Group Company (other than an Insignificant Subsidiary) under the federal bankruptcy laws as now or hereafter in effect.

(g) Judgments. One or more judgments, orders, decrees or arbitration awards is entered against any Group Company involving in the aggregate a liability (to the extent not covered by independent third-party insurance or an indemnity from a creditworthy third party as to which the insurer or indemnitor, as applicable, does not dispute coverage), as to any single or related series of transactions, incidents or conditions, of \$5,000,000 or more, and the same shall not have been discharged, vacated or stayed pending appeal within 30 days after the entry thereof.

(h) Employee Benefit Plans. (i) An ERISA Event occurs which has resulted or could reasonably be expected to result in liability of any Group Company in an amount that could reasonably be expected to have a Material Adverse Effect.

(i) Guaranties. Any Guaranty given by any Credit Parties or any provision thereof shall, except pursuant to the terms thereof, cease to be in full force and effect, or any Guarantor thereunder or any Person acting by or on behalf of such guarantor shall deny or disaffirm such Guarantor's obligations under such Guaranty.

(j) Impairment of Collateral. Any security interest purported to be created by any Collateral Document shall cease to be, or shall be asserted by any Group Company not to be, a valid, perfected, first-priority (except as otherwise expressly provided in such Collateral Document) security interest in the securities, assets or properties covered thereby, other than in respect of assets and properties which, individually and in the aggregate, are not material to the Group Companies taken as a whole;

(k) Ownership. A Change of Control shall occur.

(l) Subordinated Debt. (i) Any Governmental Authority with applicable jurisdiction determines that the Lenders are not holders of Senior Indebtedness (as defined in the Senior Subordinated Debentures Indenture and the Junior Debentures Indenture and any other Subordinated Debt) or (ii) the subordination provisions creating the Subordinated Debt shall, in whole or in part terminate, cease to be effective or cease to be legally valid, binding and enforceable as to any holder of the Subordinated Debt.

Section 8.02 Acceleration; Remedies. Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived in writing by the Required Lenders (or the Lenders as may be required pursuant to Section 10.03), the Administrative Agent (or the Collateral Agent, as applicable) shall, upon the request and direction of the Required Lenders, by written notice to the Borrower, take any of the following actions without prejudice to the rights of the Agents or any Lender to enforce its claims against the Credit Parties except as otherwise specifically provided for herein:

(a) Termination of Commitments. Declare the Commitments terminated whereupon the Commitments shall be immediately terminated.

(b) Acceleration of Loans. Declare the unpaid principal of and any accrued interest in respect of all Loans, any reimbursement obligations arising from drawings under Letters of Credit and any and all other indebtedness or obligations of any and every kind owing by a Credit Party to any of the Lenders hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Credit Parties.

(c) Cash Collateral. Direct the Borrower to pay (and the Borrower agrees that upon receipt of such notice, or upon the occurrence of an Event of Default under Section 8.01(f), it will immediately pay) to the Collateral Agent additional cash, to be held by the Collateral Agent, for the benefit of the Lenders, in a cash collateral account as additional security for the LC Obligations in respect of subsequent drawings under all then outstanding Letters of Credit in an amount equal to 105% of the maximum aggregate amount which may be drawn under all Letters of Credits then outstanding.

(d) Enforcement of Rights. Enforce any and all rights and interests created and existing under the Senior Finance Documents, including, without limitation, all rights and remedies existing under the Collateral Documents, all rights and remedies against a Guarantor and all rights of set-off.

Notwithstanding the foregoing, if an Event of Default specified in Section 8.01(f) shall occur, then the Commitments shall automatically terminate and all Loans, all reimbursement obligations under Letters of Credit, all accrued interest in respect thereof and all accrued and unpaid fees and other indebtedness or obligations owing to the Lenders hereunder and under the other Senior Finance Documents shall immediately become due and payable without the giving of any notice or other action by the Administrative Agent or the Lenders, which notice or other action is expressly waived by the Credit Parties.

Notwithstanding the fact that enforcement powers reside primarily with the Administrative Agent, each Lender has, to the extent permitted by law, a separate right of payment and shall be considered a separate "creditor" holding a separate "claim" within the meaning of Section 101(5) of the Bankruptcy Code or any other insolvency statute.

In case any one or more of the covenants and/or agreements set forth in this Agreement or any other Senior Finance Document shall have been breached by any Credit Party, then the Administrative Agent may proceed to protect and enforce the Lenders' rights either by suit in equity and/or by action at law, including an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement or such other Senior Finance Document. Without limitation of the foregoing, the Borrower agrees that failure to comply with any of the covenants contained herein will cause irreparable harm and that specific performance shall be available in the event of any breach thereof. The Administrative Agent acting pursuant to this paragraph shall be indemnified by the Borrower against all liability, loss or damage, together with all reasonable costs and expenses related thereto (including reasonable legal and accounting fees and expenses) in accordance with Section 10.05.

Section 8.03 Allocation of Payments After Event of Default

(a) Priority of Distributions. The Borrower hereby irrevocably waives the right to direct the application of any and all payments in respect of its Finance Obligations and any proceeds of Collateral after the occurrence and during the continuance of an Event of Default and agrees that, notwithstanding the provisions of Sections 2.09(b) and 2.14, after the occurrence and during the continuance of an Event of Default, all amounts collected or received by the Administrative Agent, the Collateral Agent or any Finance Party on account of amounts then due and outstanding under any of the Senior Finance Documents or any Derivative Agreement or in respect of the Collateral shall be paid over or delivered in respect of its Finance Obligations as follows:

FIRST, to pay interest on and then principal of any portion of the Revolving Loans that the Administrative Agent may have advanced on behalf of any Lender for which the Administrative Agent has not then been reimbursed by such Lender or the Borrower;

SECOND, to pay interest on and then principal of any Swingline Loan;

THIRD, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of the Administrative Agent or the Collateral Agent in connection with enforcing the rights of the Finance Parties under the Finance Documents, including all expenses of sale or other realization of or in respect of the Collateral, including reasonable compensation to the agents and counsel for the Collateral Agent, and all expenses, liabilities and advances incurred or made by the Collateral Agent in connection therewith, and any other obligations owing to the Collateral Agent in respect of sums advanced by the Collateral Agent to preserve the Collateral or to preserve its security interest in the Collateral;

FOURTH, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of (i) each of the Lenders (including any Issuing Lender in its capacity as such) in connection with enforcing its rights under the Senior Finance Documents or otherwise with respect to the Senior Obligations owing to such Lender and (ii) each Derivatives Creditor in connection with enforcing any of its rights under the Derivatives Agreements or otherwise with respect to the Derivatives Obligations owing to such Derivatives Creditor;

FIFTH, to the payment of all of the Senior Obligations consisting of accrued fees and interest;

SIXTH, except as set forth in clauses FIRST through FIFTH above, to the payment of the outstanding Senior Obligations and Derivatives Obligations owing to any Finance Party, pro-rata, as set forth below, with (i) an amount equal to the Senior Obligations being paid to the Collateral Agent (in the case of Senior Obligations owing to the Collateral Agent) or to the Administrative Agent (in the case of all other Senior Obligations) for the account of the Lenders or any Agent, with the Collateral Agent, each Lender and the Agents receiving an amount equal to its outstanding Senior Obligations, or, if the proceeds are insufficient to pay in full all Senior Obligations, its Pro-Rata Share of the amount remaining to be distributed, and (ii) an amount equal to the Derivatives Obligations being paid to the trustee, paying agent or other similar representative (each a "Representative") for the Derivatives Creditors, with each Derivatives Creditor receiving an amount equal to the outstanding Derivatives Obligations owed to it by the Credit Parties or, if the proceeds are insufficient to pay in full all such Derivatives Obligations, its Pro-Rata Share of the amount remaining to be distributed;

SEVENTH, to the payment of the surplus, if any, to whomever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; (ii) each of the Finance Parties shall receive an amount equal to its Pro-Rata Share of amounts available to be applied pursuant to clauses "FOURTH", "FIFTH", and "SIXTH" above; and (iii) to the extent that any amounts available for distribution pursuant to clause "SIXTH" above are attributable to the issued but undrawn amount of outstanding Letters of Credit, such amounts shall be held by the Collateral Agent in a cash collateral account and applied (x) first, to reimburse the Issuing Lender from time to time for any drawings under such Letters of Credit and (y) then, following the expiration of all Letters of Credit, to all other obligations of the types described in clause "SIXTH" above in the manner provided in this Section 8.03.

(b) Pro-Rata Treatment. For purposes of this Section, "Pro-Rata Share" means, when calculating a Finance Party's portion of any distribution or amount, that amount (expressed as a

percentage) equal to a fraction the numerator of which is the then unpaid amount of such Finance Party's Senior Obligations or Derivatives Obligations, as the case may be, and the denominator of which is the then outstanding amount of all Senior Obligations or Derivatives Obligations, as the case may be. When payments to the Finance Parties are based upon their respective Pro-Rata Shares, the amounts received by such Finance Parties hereunder shall be applied (for purposes of making determinations under this Section 8.03 only) (i) first, to their Senior Obligations and (ii) second, to their Derivatives Obligations. If any payment to any Finance Party of its Pro-Rata Share of any distribution would result in overpayment to such Finance Party, such excess amount shall instead be distributed in respect of the unpaid Senior Obligations or Derivatives Obligations, as the case may be, of the other Finance Parties, with each Finance Party whose Senior Obligations or Derivatives Obligations, as the case may be, have not been paid in full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid Senior Obligations or Derivatives Obligations, as the case may be, of such Finance Party and the denominator of which is the unpaid Senior Obligations or Derivatives Obligations, as the case may be, of all Finance Parties entitled to such distribution.

(c) Distributions with Respect to Letters of Credit Each of the Finance Parties agrees and acknowledges that if (after all outstanding Loans and Reimbursement Obligations with respect to Letters of Credit have been paid in full) the Lenders are to receive a distribution on account of undrawn amounts with respect to Letters of Credit issued (or deemed issued) under the Credit Agreement, such amounts shall be deposited in the LC Cash Collateral Account as cash security for the repayment of Senior Obligations owing to the Lenders as such. Upon termination of all outstanding Letters of Credit, all of such cash security shall be applied to the remaining Senior Obligations of the Lenders. If there remains any excess cash security, such excess cash shall be withdrawn by the Collateral Agent from the LC Cash Collateral Account and distributed in accordance with Section 8.03(a) hereof.

(d) Distributions of Funds on Deposit in a Prepayment Account Notwithstanding the foregoing provisions of this Section 8.03, amounts on deposit in a Prepayment Account for any Class of Loans shall be applied upon the occurrence of any Event of Default, first, to pay Loans of such Class and, second, after all the Loans of such Class have been paid in full, to the other Senior Obligations in the manner provided in this Section 8.03.

(e) Reliance by Collateral Agent For purposes of applying payments received in accordance with this Section 8.03, the Collateral Agent shall be entitled to rely upon (i) the Administrative Agent under the Credit Agreement and (ii) the Representative, if any, for the Derivatives Creditors for a determination (which the Administrative Agent, each Representative for any Derivatives Creditor and the Finance Parties agree (or shall agree) to provide upon request of the Collateral Agent) of the outstanding Senior Obligations or Derivatives Obligations owed to the Agents, the Lenders or the Derivatives Creditors, as the case may be. Unless it has actual knowledge (including by way of written notice from a Derivatives Creditor or any Representatives thereof) to the contrary, the Collateral Agent, in acting hereunder, shall be entitled to assume that no Derivatives Agreements are in existence.

ARTICLE IX AGENCY PROVISIONS

Section 9.01 Appointment; Authorization.

(a) Appointment. Each Lender hereby designates and appoints Merrill Lynch Capital as Administrative Agent and as Collateral Agent and JPMorgan Chase Bank as Syndication Agent for such Lender to act as specified herein and in the other Senior Finance Documents, and each such Lender hereby authorizes the Agents, as the agents for such Lender, to take such action on its behalf under the provisions of this Agreement and the other Senior Finance Documents and to exercise such powers and

perform such duties as are expressly delegated by the terms hereof and of the other Senior Finance Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere herein and in the other Senior Finance Documents, the Agents shall not have any duties or responsibilities, except those expressly set forth herein and therein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any of the other Senior Finance Documents, or shall otherwise exist against the Agents. In performing its functions and duties under this Agreement and the other Senior Finance Documents, each Agent shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation or relationship of agency or trust with or for any Credit Party. Without limiting the generality of the foregoing two sentences, the use of the term "agent" herein and in the other Senior Finance Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The provisions of this Article IX (other than Section 9.10) are solely for the benefit of the Agents and the Lenders, and none of the Credit Parties shall have any rights as a third party beneficiary of the provisions hereof (other than Section 9.10).

(b) *Release of Collateral.* The Lenders irrevocably authorize the Collateral Agent, at the Collateral Agent's option and in its discretion, to release any security interest in or Lien on any Collateral granted to or held by the Collateral Agent (i) upon termination of this Agreement and the other Senior Finance Documents, termination of the Commitments and all Letters of Credit and payment in full of all Senior Obligations, including all fees and indemnified costs and expenses that are payable pursuant to the terms of the Senior Finance Documents, (ii) if such Collateral constitutes property sold or to be sold or disposed of as part of or in connection with any disposition permitted pursuant to the terms of this Agreement or (iii) if approved by the Required Lenders or Lenders, as applicable, pursuant to the terms of Section 10.03. Upon the request of the Collateral Agent, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 9.01(b).

(c) *Release of Guarantors.* The Lenders irrevocably authorize the Administrative Agent, at the Administrative Agent's option and in its discretion, to release any Guarantor from its obligations hereunder if (i) such Guarantor is no longer required to be a Guarantor pursuant to the terms of this Agreement or (ii) if approved by the Required Lenders or Lenders, as applicable, pursuant to the terms of Section 10.03. Upon the request of the Administrative Agent, the Lenders will confirm in writing the Administrative Agent's authority to release a particular Guarantor pursuant to this Section 9.01(c).

(d) *HLT Classification.* Each Lender recognizes that applicable Laws may require the Administrative Agent to determine whether the transactions contemplated hereby should be classified as "highly leveraged" or assigned any similar or successor classification, and that such determination may be binding upon the other Lenders. Each Lender understands that any such determination shall be made solely by the Administrative Agent based upon such factors (which may include the Administrative Agent's internal policies and prevailing market practices) as the Administrative Agent shall deem relevant and agrees that the Administrative Agent shall have no liability for the consequences of any such determination.

Section 9.02 Delegation of Duties. An Agent may execute any of its duties hereunder or under the other Senior Finance Documents by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to

such duties. An Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it in the absence of bad faith, gross negligence or willful misconduct.

Section 9.03 Exculpatory Provisions. No Agent nor any of its or their directors, officers, employees or agents shall be (i) liable for any action lawfully taken or omitted to be taken by any of them under or in connection herewith or in connection with any of the other Senior Finance Documents or the transactions contemplated hereby or thereby (except for its own bad faith, gross negligence or willful misconduct in connection with its duties expressly set forth herein) or (ii) responsible in any manner to any of the Lenders or participants for any recitals, statements, representations or warranties made by any of the Credit Parties contained herein or in any of the other Senior Finance Documents or in any certificate, report, document, financial statement or other written or oral statement referred to or provided for in, or received by an Agent under or in connection herewith or in connection with the other Senior Finance Documents, or enforceability or sufficiency thereof of any of the other Senior Finance Documents, or for any failure of any Credit Party to perform its obligations hereunder or thereunder or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the Loans or the use of the Letters of Credit or of the existence or possible existence of any Default or Event of Default or to inspect the properties, books or records of the Credit Parties.

Section 9.04 Reliance on Communications. The Agents shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex, teletype or e-mail message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to any of the Credit Parties, independent accountants and other experts selected by the Agents). The Agents may deem and treat each Lender as the owner of its interests hereunder for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent in accordance with Section 10.06(b). The Agents shall be fully justified in failing or refusing to take any action under this Agreement or under any of the other Senior Finance Documents unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agents shall in all cases be fully protected in acting, or in refraining from acting, hereunder or under any of the other Senior Finance Documents in accordance with a request of the Required Lenders (or to the extent specifically provided in Section 10.03, all the Lenders) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders (including their successors and assigns). Where this Agreement expressly permits or prohibits an action unless the Required Lenders otherwise determine, any Agent shall, and in all other instances an Agent may, but shall not be required to, initiate any solicitation for the consent or vote of the Lenders.

Section 9.05 Notice of Default. An Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder, except with respect to defaults in the payment of principal, interest and fees required to be paid to such Agent for the accounts of the Lenders, unless such Agent has received notice from a Lender or the Borrower referring to the Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". If an Agent receives such a notice, such Agent shall give prompt notice thereof to each other Agent and the Lenders. The Administrative Agent and the Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; provided, however, that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such

action, with respect to such Default or Event of Default or it shall deem advisable or in the best interest of the Lenders.

Section 9.06 Credit Decision; Disclosure of Information by Administrative Agent. Each Lender expressly acknowledges that no Agent has made any representations or warranties to it and that no act by any Agent hereinafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Credit Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent to any Lender as to any matter, including whether any Agent has disclosed material information in its possession. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, assets, operations, property, financial and other condition, prospects and creditworthiness of the Credit Parties, and all requirements of Law pertaining to the Transaction, and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Senior Finance Documents, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Borrower and the other Credit Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Agents shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, assets, property, financial or other conditions, prospects or creditworthiness of any Credit Party or their respective Affiliates which may come into the possession of any Agent.

Section 9.07 No Reliance on Arranger's or Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender nor any of its Affiliates, participants or assignees may rely on either Lead Arranger or any Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the U.S. Patriot Act or the regulations thereunder, including the regulations contained in 31 C.F.R. 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any of the Credit Parties, their Affiliates or agents, the Senior Finance Documents or the transactions hereunder or contemplated hereby: (i) any identification procedures; (ii) and recordkeeping; (iii) comparisons with government lists, (iv) customer notices; or (v) other procedures required under the CIP Regulations or such other Laws.

Section 9.08 Indemnification. Whether or not the transactions contemplated hereby are consummated, the Lenders agree to indemnify each Agent (to the extent not reimbursed by the Borrower or any other Credit Party and without limiting the obligation of the Borrower or any other Credit Party to do so), ratably according to their respective Commitments (or if the Commitments have expired or been terminated, in accordance with the respective principal amounts of outstanding Loans and Participation Interests of the Lenders), from and against any and all Indemnified Liabilities which may at any time (including without limitation at any time following payment in full of the Senior Obligations) be imposed on, incurred by or asserted against an Agent in its capacity as such in any way relating to or arising out of this Agreement or the other Senior Finance Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by an Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment to any Agent of any portion of such Indemnified Liabilities resulting from such Person's gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful

misconduct for purposes of this Section 9.08. If any indemnity furnished to an Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including fees and disbursements of counsel) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Senior Finance Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower or any other Credit Party. The agreements in this Section 9.08 shall survive the payment of the Senior Obligations and all other obligations and amounts payable hereunder and under the other Senior Finance Documents.

Section 9.09 Agents in Their Individual Capacity. Each Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting and other business with the Borrower or any other Credit Party as though such Agent were not an Agent hereunder or under another Senior Finance Document. The Lenders acknowledge that, pursuant to any such activities, an Agent or its Affiliates may receive information regarding any Credit Party or its Affiliates (including information that may be subject to confidentiality obligations in favor of such Credit Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them. With respect to the Loans made by and Letters of Credit issued by and all obligations owing to it, an Agent shall have the same rights and powers under this Agreement as any Lender and may exercise the same as though it was not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

Section 9.10 Successor Agents. Any Agent may, at any time, resign upon 30 days' written notice to the Lenders. If an Agent resigns under a Senior Finance Document, the Required Lenders shall appoint from among the Lenders a successor Agent, which successor Agent shall be consented to by the Borrower at all times other than during the existence of an Event of Default (which consent of the Borrower shall not be unreasonably withheld or delayed). If no successor Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment prior to the effective date of the resignation of the resigning Agent, then the resigning Agent shall have the right, after consulting with the Lenders and the Borrower, to appoint a successor Agent; provided such successor is a Lender hereunder or an Eligible Assignee. If no successor Agent is appointed prior to the effective date of the resignation of the resigning Agent, the Administrative Agent may appoint, after consulting with the Lenders and the Borrower, a successor Agent from among the Lenders. Upon the acceptance of any appointment as an Agent hereunder by a successor, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations as an Agent, as appropriate, under this Agreement and the other Senior Finance Documents and the provisions of this Section 9.10 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement. If no successor Administrative Agent has accepted appointment as Administrative Agent within 60 days after the retiring Administrative Agent's giving notice of resignation, the retiring Administrative Agent's resignation shall nevertheless become effective and the Lenders shall perform all duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Likewise, if no successor Collateral Agent has accepted appointment as Collateral Agent within 60 days after the retiring Collateral Agent's giving notice of resignation, the retiring Collateral Agent's resignation shall nevertheless become effective and the

Lenders shall perform all duties of the Collateral Agent under the Collateral Documents until such time, if any, as the Required Lenders appoint a successor Collateral Agent as provided for above.

Section 9.11 Certain Other Agents. None of the Lenders identified on the facing page or signature pages of this Agreement as a “syndication agent”, “documentation agent”, “co-agent”, “bookrunner”, “lead manager” or “arranger” shall have any right, power, obligation, liability, responsibility or duty under the Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or any such Person so identified shall have or be deemed to have any fiduciary relationship to any Lender or Credit Party. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

Section 9.12 Agents’ Fees; Arranger Fee. The Borrower shall pay to the Administrative Agent for its own account, to the Collateral Agent for its own account and to the Lead Arrangers, in their capacity as Lead Arrangers, for their own account, fees in the amounts and at the times previously agreed upon between the Borrower and the Administrative Agent, the Collateral Agent and the Lead Arrangers, respectively, in each case with respect to this Agreement, the other Senior Finance Documents and the transactions contemplated hereby and thereby.

ARTICLE X MISCELLANEOUS

Section 10.01 Notices and Other Communications.

(a) *General.* Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including by facsimile transmission) and mailed, faxed or delivered, to the address, facsimile number or (subject to subsection (c) below) electronic mail address specified for notices: (i) in the case of Holdings, Intermediate Holdings, the Borrower, the Administrative Agent, or the Swingline Lender, as set forth on the signature pages hereof, (ii) in the case of any Issuing Lender, as set forth on the signature pages hereto, or in any applicable agreement pursuant to which such Issuing Lender was designated as an Issuing Lender hereunder, (iii) in the case of any Lender, as set forth in Schedule 1.01E hereto or in any applicable Assignment and Acceptance pursuant to which such Lender became a Lender hereunder, and (iv) in the case of any party, at such other address as shall be designated by such party in a notice to the Borrower, the Administrative Agent, any Issuing Lender and the Swingline Lender. All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the intended recipient and (ii) (A) if delivered by hand or by courier, when signed for by the intended recipient; (B) if delivered by mail, four Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of subsection (c) below), when delivered; provided, however, that notices and other communications to the Administrative Agent, any Issuing Lender and the Swingline Lender pursuant to Article II shall not be effective until actually received by such Person. Any notice or other communication permitted to be given, made or confirmed by telephone hereunder shall be given, made or confirmed by means of a telephone call to the intended recipient at the number specified pursuant to this Section 10.01, it being understood and agreed that a voicemail message shall in no event be effective as a notice, communication or confirmation hereunder.

(b) *Effectiveness of Facsimile Documents and Signatures.* Senior Finance Documents may be transmitted and/or signed by facsimile or signed and delivered by electronic mail in an Adobe PDF document. The effectiveness of any such documents and signatures shall, subject to requirements of Law, have the same force and effect as manually-signed originals and shall be binding on

all Credit Parties, the Agents and the Lenders. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document, Adobe PDF document or signature.

(c) Limited Use of Electronic Mail. Except as expressly provided herein or as may be agreed by the Administrative Agent in its sole discretion, electronic mail and internet and intranet websites may be used only to distribute routine communications, such as financial statements and other information, and to distribute Senior Finance Documents for execution by the parties thereto, to distribute executed Senior Finance Documents in Adobe PDF format and may not be used for any other purpose.

(d) Reliance by Agents and Lenders. The Agents and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower or any other Credit Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.02 No Waiver; Cumulative Remedies. No failure or delay on the part of an Agent or any Lender in exercising any right, power or privilege hereunder or under any other Senior Finance Document and no course of dealing between the Agents or any Lender and any of the Credit Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Senior Finance Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which the Agents or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle the Credit Parties to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Agents or the Lenders to any other or further action in any circumstances without notice or demand.

Section 10.03 Amendments, Waivers and Consents. Neither this Agreement nor any other Senior Finance Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated except, in the case of this Agreement pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower, and the Required Lenders or, in the case of any other Senior Finance Document, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower, any other Credit Parties party thereto and the Administrative Agent and/or the Collateral Agent, as applicable, party thereto; provided that (i) the foregoing shall not restrict the ability of the Required Lenders to waive any Event of Default prior to the time the Administrative Agent shall have declared, or the Required Lenders shall have requested the Administrative Agent to declare, the Loans immediately due and payable pursuant to Article VIII and (ii) the Administrative Agent and the Borrower may, with the consent of the other, amend, modify or supplement this Agreement and any other Senior Finance Document to cure any ambiguity, typographical error, defect or inconsistency if such amendment, modification or supplement does not adversely affect the rights of any Agent, any Lender or any Issuing Lender; provided, however, that:

(i) no such amendment, change, waiver, discharge or termination shall, without the consent of each Lender directly affected thereby:

(A) extend the final maturity of any Loan or the time of payment of any reimbursement obligation, or any portion thereof, arising from drawings under Letters of Credit, or extend or waive any Principal Amortization Payment or any portion thereof (it being understood that only Required Lenders are necessary to consent to the amendment or waiver of any prepayment required under Section 2.09(b)); provided that this clause (A) shall not restrict the ability of the Required Lenders to waive any Event of Default (other than an Event of Default the waiver of which would effectively result in any such extension or waiver), prior to the time the Administrative Agent shall have declared, or the Required Lenders shall have requested the Administrative Agent to declare, the Loans immediately due and payable pursuant to Article VIII;

(B) reduce the rate, or extend the time of payment, of interest on any Loan (other than as a result of waiving the applicability of any post-default increase in interest rates) thereon or fees hereunder;

(C) reduce or waive the principal amount of any Loan or any LC Disbursement;

(D) change the Commitment of a Lender from the amount thereof in effect (it being understood and agreed that a waiver of any Default or Event of Default or a mandatory reduction in the Commitments shall not constitute a change in the terms of any Commitment of any Lender);

(E) release all or substantially all of the Collateral securing the Senior Obligations hereunder (provided that the Collateral Agent may, without consent from any other Lender, release any Collateral that is sold or transferred by a Credit Party in compliance with Section 7.05 or released in compliance with Section 9.01(b));

(F) release the Borrower or substantially all of the other Credit Parties from its or their obligations under the Senior Finance Documents provided that the Administrative Agent may, without the consent of any other Lender, release any Guarantor that is sold or transferred in compliance with Section 7.05);

(G) amend, modify or waive any provision of this Section 10.03, or reduce any percentage specified in, or otherwise modify, the definition of Required Lenders;

(H) consent to the assignment or transfer by the Borrower or all or substantially all of the other Credit Parties of any of its or their rights and obligations under (or in respect of) the Senior Finance Documents, except as permitted thereby; or

(I) amend the priority of distributions to made pursuant to Section 8.03 (a);

(ii) no provision of Article IX may be amended without the consent of the Administrative Agent and the Collateral Agent, no provision of Section 2.05 may be amended without the consent of each Issuing Lender and no provision of Section 2.01(c) may be amended without the consent of the Swingline Lender.

Notwithstanding the above, the right to deliver a Senior Default Notice (as defined in the Subordination Agreement and a notice of an Extension Period as defined in the Junior Debentures

Indenture and the equivalent of a payment blockage notice under any other Subordinated Debt), shall reside solely with the Administrative Agent, and the Administrative Agent shall deliver such notice, only upon the direction of the Required Lenders.

Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above, (i) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans or the Letters of Credit, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersede the unanimous consent provisions set forth herein and (ii) the Required Lenders may consent to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding.

The various requirements of this Section 10.03 are cumulative. Each Lender and each holder of a Note shall be bound by any waiver, amendment or modification authorized by this Section 10.03 regardless of whether its Note shall have been marked to make reference therein, and any consent by any Lender or holder of a Note pursuant to this Section 10.03 shall bind any Person subsequently acquiring a Note from it, whether or not such Note shall have been so marked.

Section 10.04 Expenses. Holdings and the Borrower, jointly and severally, agree (i) to pay or reimburse the Administrative Agent for all reasonable out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of this Agreement and the other Senior Finance Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby or thereby are consummated), and the consummation of the transactions contemplated hereby and thereby, including all reasonable fees, disbursements and other charges of Fried, Frank, Harris, Shriver & Jacobson, LLP, counsel for the Lead Arrangers and the Administrative Agent, and (ii) to pay or reimburse (without duplication of any amount paid pursuant to Section 10.05) each Agent and each Lender for all reasonable costs and expenses incurred in connection with the enforcement, attempted enforcement or preservation of any rights or remedies under this Agreement or the other Senior Finance Documents (including all such costs and expenses incurred during any “workout” or restructuring in respect of the Senior Obligations and during any legal proceeding, including any proceeding under any bankruptcy or insolvency proceeding), including all reasonable fees and disbursements of counsel (including the allocated charges of internal counsel), provided that the Borrower shall not be required to reimburse the legal fees and expenses of more than one outside counsel (in addition to up to one local counsel in each applicable local jurisdiction) for all Persons indemnified under this clause (ii) unless, in the written opinion of outside counsel reasonably satisfactory to the Borrower, representation of all such indemnified persons would be inappropriate due to the existence of an actual or potential conflict of interest. The foregoing costs and expenses shall include all search, filing, recording, title insurance and appraisal charges and fees and taxes related thereto, and other out-of-pocket expenses incurred by any Agent and the cost of independent public accountants and other outside experts retained by or on behalf of the Agents and the Lender. The agreements in this Section 10.04 shall survive the termination of the Commitments and repayment of all Senior Obligations.

Section 10.05 Indemnification. Whether or not the transactions contemplated hereby are consummated, Holdings and the Borrower jointly and severally agree to indemnify, save and hold harmless each Agent, each Lender and their respective Affiliates, directors, officers, employees, counsel, agents, trustees, investment advisors and attorneys-in-fact and their respective successors and assignors (collectively, the “Indemnitees”) from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnitee by any Person (other than the Administrative Agent or any Lender) relating directly or indirectly to a claim, demand, action or cause of action that such Person asserts or may assert against any Credit Party, any Affiliate of any Credit Party or any of their respective officers or directors; (ii) any and all claims, demands, actions or causes of action that may at any time

(including at any time following repayment of the Senior Obligations and the resignation or removal of any Agent or the replacement of any Lender) be asserted or imposed against any Indemnitee, arising out of or relating to, the Senior Finance Documents, any predecessor Senior Finance Documents, the Commitments, the use of or contemplated use of the proceeds of any Credit Extension, or the relationship of any Credit Party, any Agent and the Lenders under this Agreement or any other Senior Finance Document or from any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Group Company, or any Environmental Liability related in any way to any Group Company; (iii) any administrative or investigative proceeding by any Governmental Authority arising out of or related to a claim, demand, action or cause of action described in clause (i) or (ii) above; and (iv) any and all liabilities (including liabilities under indemnities), losses, costs or expenses (including fees and disbursements of counsel) that any Indemnitee suffers or incurs as a result of the assertion of any foregoing claim, demand, action, cause of action or proceeding, or as a result of the preparation of any defense in connection with any foregoing claim, demand, action, cause of action or proceeding, in all cases, and whether or not an Indemnitee is a party to such claim, demand, action, cause of action, or proceeding (all the foregoing, collectively, the "Indemnified Liabilities"); provided that no Indemnitee shall be entitled to indemnification for any claim to the extent such claim is determined by a court of competent jurisdiction is a final and nonappealable judgment to have been caused by its own gross negligence, bad faith or willful misconduct and provided further that Holdings and the Borrower shall not be required to reimburse the legal fees and expenses of more than one outside counsel (in addition to up to one local counsel in each applicable local jurisdiction) for all Indemnities unless, in the written opinion of outside counsel reasonably satisfactory to the Borrower, representation of all such Indemnitees would be inappropriate due to the existence of an actual or potential conflict of interest. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Credit Party, its directors, shareholders or creditors or an Indemnitee or any other Person or any Indemnitee is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. Each of Holdings and the Borrower agrees not to assert or permit any of their respective Subsidiaries to assert any claim against any Agent, any Lender, any of their Affiliates or any of their respective directors, officers, employees, attorneys, agents and advisers, and each of the Agents and the Lenders agrees not to assert or permit any of their respective Subsidiaries to assert any claim against Holdings, the Borrower or any of their respective Subsidiaries or any of their respective directors, officers, employees, attorneys, agents, trustees or advisers, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the Senior Finance Documents, any of the transactions contemplated herein or therein or the actual or proposed use of the proceeds of the Loans or the Letters of Credit. Without prejudice to the survival of any other agreement of the Credit Parties hereunder and under the other Senior Finance Documents, the agreements and obligations of the Credit Parties contained in this Section 10.05 shall survive the repayment of the Loans, LC Obligations and other obligations under the Senior Finance Documents and the termination of the Commitments hereunder.

Section 10.06 Successors and Assigns.

(a) Generally. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided that none of the Credit Parties may assign or transfer any of its interests and obligations without the prior written consent of either the Required Lenders or the Lenders, as the terms set forth in Section 10.03 may require;

(b) Assignments. Any Lender may assign all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Loans, its Notes, its Commitments and any Participation Interest in Letters of Credit and Swingline Loans held by it); provided, however, that

(i) each such assignment shall be to an Eligible Assignee;

(ii) except in the case of an assignment to another Lender, an Affiliate of an existing Lender or any Approved Fund (A) the aggregate amount of the Revolving Commitment or Term B Loans of an assigning Lender subject to each such assignments (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent or, if a "Trade Date" is specified in the Assignment and Acceptance, as of the Trade Date) shall not, without the consent of the Lead Arrangers and, if no Default or Event of Default has occurred and is continuing, the Borrower, be less (with respect to any such Class) than \$1,000,000, and an integral multiple of \$1,000,000 (or such lesser amount as shall equal the assigning Lender's entire Revolving Commitment or Term B Loans) and (B) after giving effect to such assignment, unless otherwise consented to by the Borrower if no Default or Event of Default has occurred and is continuing, the aggregate amount of the Revolving Commitment and Term B Loans at the time owing to, the assigning Lender shall not be less than \$1,000,000 (unless the assigning Lender shall have assigned its entire Revolving Commitment and Term B Loans at the time owing it pursuant to such assignment or assignments otherwise complying with this Section 10.06 executed substantially simultaneously with such assignment); provided however, assignments in connection with the primary syndication of the Revolving Commitments or Term B Loans (x) may be made and may be recorded in the Register by the Administrative Agent without any further consent or approval by the Lead Arrangers or the Borrower notwithstanding that the amount subject to any such assignment fails to equal or exceed \$1,000,000 or any integral multiple thereof; and (y) may be less than \$1,000,000;

(iii) each such assignment by a Lender shall be of a constant, and not varying, percentage of all rights and obligations in respect of a particular Class of Commitments under this Agreement and the other Senior Finance Documents; and

(iv) the parties to such assignment shall execute and deliver to the Administrative Agent and, only with respect to any assignment of all or a portion of the Revolving Committed Amount, the Issuing Lenders for their acceptance an Assignment and Acceptance in the form of Exhibit C, together with any Note subject to such assignment and a processing fee of \$3,500 (the "Assignment Fee"), payable or agreed between the assigning Lender and the assignee (and which shall not be required to be paid by the Borrower); provided however, if the parties of such assignment shall electronically execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent in its sole discretion (which initially shall be Clearpar, LLC) the Assignment Fee shall be \$500. No Assignment Fee shall be payable in connection with any assignment to which Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch Capital Corporation or any of their affiliates are a party.

(c) Assignment and Acceptance. By executing and delivering an Assignment and Acceptance in accordance with this Section 10.06, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and the assignee warrants that it is an Eligible Assignee; (ii) except as set forth in clause (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, any of the other Senior Finance Documents or any other instrument or document furnished pursuant hereto or thereto, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any of the other Senior Finance Documents or any other instrument or document furnished pursuant hereto or thereto or the financial

condition of the Credit Parties or the performance or observance by any Credit Party of any of its obligations under this Agreement, any of the other Senior Finance Documents or any other instrument or document furnished pursuant hereto or thereto; (iii) such assignee represents and warrants that it is legally authorized to enter into such assignment agreement; (iv) such assignee confirms that it has received a copy of this Agreement, the other Senior Finance Documents, together with copies of the most recent financial statements delivered pursuant to Section 6.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon the Administrative Agent, any Issuing Lender, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Senior Finance Documents; (vi) such assignee appoints and authorizes each of the Administrative Agent and the Collateral Agent to take such action on its behalf and to exercise such powers under this Agreement or any other Senior Finance Document as are delegated to such Persons by the terms hereof or thereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement and the other Senior Finance Documents are required to be performed by it as a Lender. Upon execution, delivery, and acceptance of such Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of such assignment, have the obligations, rights, and benefits of a Lender hereunder and the assigning Lender shall, to the extent of such assignment, relinquish its rights and be released from its obligations under this Agreement. Upon the consummation of any assignment pursuant to this Section 10.06(c), the assignor, the Administrative Agent and the Credit Parties shall make appropriate arrangements so that, if required, new Notes are issued to the assignor and the assignee. If the assignee is not a United States person under Section 7701(a)(30) of the Code, it shall deliver to the Credit Parties and the Administrative Agent certification as to exemption from deduction or withholding of Taxes in accordance with Section 3.01. In addition, if applicable, the assignee shall deliver to the Administrative Agent the information referred to in Section 10.20.

(d) Register. The Borrower hereby designates the Administrative Agent to serve as its agent, solely for purposes of this subsection 10.06(d), to (i) maintain a register (the "Register") on which the Administrative Agent will record the Commitments from time to time of each Lender, the Loans made by each Lender and each repayment in respect of the principal amount of the Loans of each Lender and to (ii) retain a copy of each Assignment and Acceptance delivered to the Administrative Agent pursuant to this Section 10.06. Failure to make any such recordation, or any error in such recordation, shall not affect the Borrower's obligation in respect of such Loans. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent, the Issuing Lenders and the Lenders shall treat each Person in whose name a Loan and the Note evidencing the same is registered as the owner thereof for all purposes of this Agreement, notwithstanding notice or any provision herein to the contrary. With respect to any Lender, the assignment or other transfer of the Commitments of such Lender and the rights to the principal of, and interest on, any Loan made and any Note issued pursuant to this Agreement shall not be effective until such assignment or other transfer is recorded on the Register and, except to the extent provided in this subsection 10.06(d), otherwise complies with Section 10.06, and prior to such recordation all amounts owing to the transferring Lender with respect to such Commitments, Loans and Notes shall remain owing to the transferring Lender. The registration of assignment or other transfer of all or part of any Commitments, Loans and Notes for a Lender shall be recorded by the Administrative Agent on the Register only upon the acceptance by the Administrative Agent of a properly executed and delivered Assignment and Acceptance and payment of the administrative fee referred to in Section 10.06(b)(iv). The Register shall be available at the offices where kept by the Administrative Agent for inspection by the Borrower and any Lender at any reasonable time upon reasonable prior notice to the Administrative Agent. The Borrower

may not replace any Lender pursuant to Section 2.10(d), unless, with respect to any Notes held by such Lender, the requirements of subsection 10.06(b) and this subsection 10.06(d) have been satisfied.

(e) Participations. Each Lender may, without the consent of the Borrower, the Issuing Lenders, the Swingline Lender or any Agent, sell participations to one or more Persons in all or a portion of its rights, obligations or rights and obligations under this Agreement (including all or a portion of its Loans, its Notes, its Commitments and any Participation Interest in Letters of Credit and Swingline Loans held by it); provided, however, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participant shall be entitled to the benefit of the right of setoff contained in Section 10.08 and the yield protection provisions contained in Sections 3.01, 3.04 and 3.05 and to the same extent that the Lender from which such participant acquired its participation would be entitled to the benefits of such yield protection provisions; provided that the Borrower shall not be required to reimburse any participant pursuant to Sections 3.01, 3.04 or 3.05 in an amount which exceeds the amount that would have been payable thereunder to such Lender had such Lender not sold such participation and (iv) the Credit Parties, the Agents, the Issuing Lenders, the Swingline Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and such Lender shall retain the sole right to enforce the obligations of the Credit Parties relating to the Senior Obligations owing to such Lender and to approve any amendment, modification or waiver of any provision of this Agreement (other than amendments, modifications or waivers decreasing the amount of principal of or the rate at which interest is payable on such Loans or Notes, extending any scheduled principal payment date or date fixed for the payment of interest on such Loans or Notes or extending its Commitment).

(f) Other Assignments. Any Lender may at any time (i) assign all or any portion of its rights under this Agreement and any Notes to a Federal Reserve Bank, (ii) pledge or assign a security interest in all or any portion of its interest and rights under this Agreement (including all or any portion of its Notes, if any) to secure obligations of such Lender (including, without limitation, any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender as collateral security for such obligations or securities, or to any trustee for, or any other representative of such holders) and (iii) grant to an SPC referred to in subsection (h) below identified as such in writing from time to time by such Lender to the Administrative Agent and the Borrower the option to provide to the Borrower all or any part of any Loans that such Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that no such assignment, option, pledge or security interest shall release a Lender from any of its obligations hereunder or substitute any such Federal Reserve Bank or other Person to which such option, pledge or assignment has been made for such Lender as a party hereto.

(g) Information. Any Lender may furnish any information concerning any Credit Party or any of their respective Subsidiaries in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants), subject, however, to the provisions of Section 10.07.

(h) Other Funding Vehicles. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC") the option to fund all or any part of any Loan that such Granting Lender would otherwise be obligated to fund pursuant to this Agreement provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to fund all or any part of such Loan, the Granting Lender shall be obligated to fund such Loan pursuant to the terms hereof, (iii) no SPC shall have any voting rights pursuant to Section 10.01 and (iv) with respect to notices, payments and other matters hereunder, the Borrower, the Administrative Agent and the Lenders shall not be obligated to deal with an SPC, but may limit their communications and other dealings relevant to such SPC to the

applicable Granting Lender. The funding of a Loan by an SPC hereunder shall utilize the Revolving Commitment of the Granting Lender to the same extent that, and as if, such Loan were funded by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or payment under this Agreement for which a Lender would otherwise be liable for so long as, and to the extent, the Granting Lender provides such indemnity or makes such payment. Notwithstanding anything to the contrary contained in this Agreement, any SPC may disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or guarantee to such SPC. This subsection (h) may not be amended without the prior written consent of each Granting Lender, all or any part of whose Loan is being funded by an SPC at the time of such amendment.

Section 10.07 Confidentiality and Disclosure. (a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees, trustees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (ii) to the extent requested by any regulatory authority (in which case the Administrative Agent or such Lender, as applicable, shall use reasonable efforts to notify the "Borrower prior to such disclosure); (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (iv) to any other party to this Agreement; (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder; (vi) subject to an agreement containing provisions substantially the same as those of this Section 10.07, to (A) any Eligible Assignee of or participant in, or any prospective Eligible Assignee of or participant in, any of its rights or obligations under this Agreement or (B) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of the Borrower; (vii) with the consent of the Borrower; (viii) to the extent such information (A) becomes publicly available other than as a result of a breach of this Section 10.07 or (B) becomes available to an Agent or any Lender on a nonconfidential basis from a source other than the Borrower; or (ix) to the National Association of Insurance Commissioners or any other similar organization or any nationally recognized rating agency that requires access to information about a Lender's or its Affiliates' investment portfolio in connection with ratings issued with respect to such Lender or its Affiliates. For the purposes of this Section 10.07, "Information" means all information received from the Borrower or any of its Affiliates relating to the Borrower or any of its Affiliates or their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any of its Affiliates; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified in writing at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.07 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Notwithstanding the foregoing, any Agent and any Lender may place advertisements in financial and other newspapers and periodicals or on a home page or similar place for dissemination of information on the Internet or worldwide web as it may choose, and circulate similar promotional materials, after the closing of the transactions contemplated by this Agreement in the form of a "tombstone" or otherwise describing the names of the Credit Parties, or any of them, and the amount, type and closing date of such transactions, all at their sole expense.

(b) Notwithstanding the foregoing or any other contrary provision in this Agreement or any other Senior Finance Documents, the parties hereto hereby agree that, from the commencement of discussions with respect to the Transactions and the Senior Finance Documents, each of the parties hereto

and each of their respective employees, representatives and other agents may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure (as such terms are used in Sections 6011, 6111 and 6112 of the Code and the Treasury Regulations promulgated thereunder) of the Senior Finance Documents and the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to any of the parties hereto relating to such tax treatment and tax structure, other than any information for which nondisclosure is reasonably necessary in order to comply with applicable securities laws; provided, however, that for this purpose the U.S. federal income tax treatment and U.S. federal income tax structure shall not include (i) the identity of any existing or future party (or affiliate of such party) to this Agreement or (ii) any specific market pricing information, including the amount of any fees, expenses, rates or payments, arising in connection with this Agreement or the transactions contemplated hereby.

Section 10.08 Set-off. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each Lender (and each of its Affiliates) is authorized at any time and from time to time, without presentment, demand, protest or other notice of any kind (all of such rights being hereby expressly waived), to set-off and to appropriate and apply any and all deposits (general or specific, but excluding Exempt Deposit Accounts as defined in the Security Agreement) and any other indebtedness at any time held or owing by such Lender (including, without limitation, branches, agencies or Affiliates of such Lender wherever located) to or for the credit or the account of any Credit Party against obligations and liabilities of such Credit Party then due to the Lenders hereunder, under the Notes, under the other Senior Finance Documents or otherwise, and any such set-off shall be deemed to have been made immediately upon the occurrence of an Event of Default even though such charge is made or entered on the books of such Lender subsequent thereto. The Credit Parties hereby agree that to the extent permitted by law any Person purchasing a participation in the Loans, Commitments and LC Obligations hereunder pursuant to Section 2.01(c), 2.05(a) or (c), 2.13 or 10.06(e) may exercise all rights of set-off with respect to its participation interest as fully as if such Person were a Lender hereunder and any such set-off shall reduce the amount owed by such Credit Party to the Lender.

Section 10.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively, the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) that may be charged or contracted for, charged or otherwise received by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 10.09, shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such Lender shall have received such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of payment.

Section 10.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

Section 10.11 Integration. This Agreement, together with the other Senior Finance Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Senior Finance Document,

the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Administrative Agent or the Lenders in any other Senior Finance Document shall not be deemed a conflict with this Agreement. Each Senior Finance Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 10.12 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Senior Finance Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agents and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Senior Obligation shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Section 10.13 Severability. Any provision of this Agreement and the other Senior Finance Documents to which any Credit Party is a party that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.14 Headings. The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 10.15 Defaulting Lenders. Each Lender understands and agrees that if such Lender is a Defaulting Lender then, notwithstanding the provisions of Section 10.03, it shall not be entitled to vote on any matter requiring the consent of the Required Lenders or to object to any matter requiring the consent of all the Lenders adversely affected thereby; provided, however, that all other benefits and obligations under the Senior Finance Documents shall apply to such Defaulting Lender, except as provided in Section 2.03(e).

Section 10.16 Governing Law; Submission to Jurisdiction.

(a) THIS AGREEMENT AND THE OTHER SENIOR FINANCE DOCUMENTS (OTHER THAN LETTERS OF CREDIT AND OTHER THAN AS EXPRESSLY SET FORTH IN SUCH OTHER SENIOR FINANCE DOCUMENTS) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. EACH LETTER OF CREDIT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OR RULES DESIGNATED IN SUCH LETTER OF CREDIT, OR IF NO SUCH LAWS OR RULES ARE DESIGNATED, THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 500 AND, AS TO MATTERS NOT GOVERNED BY SUCH UNIFORM CUSTOMS, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF

LAWS PRINCIPLES. Any legal action or proceeding with respect to this Agreement or any other Senior Finance Document may be brought in the courts of the State of New York in New York County, or of the United States for the Southern District of New York and, by execution and delivery of this Agreement, each of Holdings and the Borrower hereby irrevocably accepts for itself and in respect of its property, generally and unconditional, the nonexclusive jurisdiction of such courts. Each of Holdings and the Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such court and any claim that any such proceeding brought in any such court has been brought in an inconvenient forum.

(b) Each of Holdings and the Borrower hereby irrevocably consents and agrees that any and all process which may be served in any suit, action or proceeding of the nature referred to in this Section 10.16 may be served by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to Holdings' or the Borrower's address referred to in Section 10.03, as the case may be. Each of Holdings and the Borrower agrees that such service (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon and personal delivery to it. Nothing in this Section 10.16 shall affect the right of any Lender to serve process in any manner permitted by law or limit the right of any Lender to bring proceedings against Holdings or the Borrower in the courts of any jurisdiction or jurisdictions.

Section 10.17 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY SENIOR FINANCE DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY SENIOR FINANCE DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY HERETO CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.18 Binding Effect. This Agreement shall become effective at such time when it shall have been executed by Holdings, Intermediate Holdings, the Borrower, and the Administrative Agent shall have received copies hereof (telexed or otherwise) which, when taken together, bear the signatures of each Lender, and thereafter this Agreement shall be binding upon and inure to the benefit of Holdings, Intermediate Holdings, the Borrower, each Agent and each Lender and their respective successors and assigns; provided, however, unless the conditions set forth in Section 4.03 have been satisfied by the Credit Parties or waived by the Lenders on or before July 21, 2006, none of Holdings, the Borrower, the Agents or the Lenders shall have any obligations under this Agreement.

Section 10.19 Lenders' U.S. Patriot Act Compliance Certification. Each Lender or assignee or participant of a Lender that is not incorporated under the Laws of the United States or a State thereof (and is not excepted from the certification requirement contained in Section 313 of the U.S.

Patriot Act and the applicable regulations because it is both (i) an Affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country and (ii) subject to supervision by a banking regulatory authority regulating such affiliated depository institution or foreign bank) shall deliver to the Administrative Agent the certification or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the U.S. Patriot Act and the applicable regulations thereunder: (i) within 10 days after the Effective Date or, if later, the date such Lender, assignee or participant of a Lender becomes a Lender, assignee or participant of a Lender hereunder and (ii) at such other times as are required under the U.S. Patriot Act.

Section 10.20 U.S. Patriot Act Notice. Each Senior Finance Party (for itself and not on behalf of any other Senior Finance Party) hereby notifies each of Holdings and the Borrower that, pursuant to the requirements of the U.S. Patriot Act, such Senior Finance Party is required to obtain, verify and record information that identifies each of Holdings and each other Credit Party, which information includes the name and address of each such Credit Party and other information that will allow such Senior Finance Party to identify each such Credit Party in accordance with the U.S. Patriot Act.

Section 10.21 Amendment and Restatement. It is the intention of each of the parties hereto that the Existing Credit Agreement be amended and restated so as to preserve the perfection and priority of all security interests securing indebtedness and obligations under the Existing Credit Agreement and that all Indebtedness and obligations of the Borrower hereunder and thereunder shall be supported by the Guaranty and secured by the Collateral Documents and that this Agreement does not constitute a novation of the obligations and liabilities existing under the Existing Credit Agreement. The parties hereto further acknowledge and agree that this Agreement constitutes an amendment of the Existing Credit Agreement made under and in accordance with the terms of Section 10.03 of the Existing Credit Agreement. In addition, unless specifically amended or updated hereby, each of the Credit Documents, the Exhibits and Schedules to the Existing Credit Agreement shall continue in full force and effect and that, from and after the Effective Date, all references to the "Credit Agreement" contained therein shall be deemed to refer to this Agreement.

Section 10.22 Reaffirmation and Grant of Security Interests.

(a) Each Credit Party (other than the Borrower) has guaranteed the Finance Obligations and each Credit Party has created Liens in favor of Lenders on all Collateral to secure its obligations hereunder, under the Guaranty, the Security Agreement and the Pledge Agreement, respectively. Each Credit Party hereby acknowledges that it has reviewed the terms and provisions of this Agreement and consents to the amendment and restatement of the Existing Credit Agreement effected pursuant to this Agreement. Each Credit Party hereby (i) confirms that each Credit Document to which it is a party or is otherwise bound and all Collateral encumbered thereby will continue to guarantee or secure, as the case may be, to the fullest extent possible in accordance with the Credit Documents, the payment and performance of the obligations under the Credit Documents, as the case may be, including without limitation, the payment and performance of all such obligations which are joint and several obligations of each Credit Party now or hereafter existing, and (ii) grants to the Administrative Agent for the benefit of the Lenders a continuing lien on and security interest in and to such Credit Party's right, title and interest in, to and under all Collateral as collateral security for the prompt payment and performance in full when due of the obligations of the Credit Parties under the Credit Documents (whether at stated maturity, by acceleration or otherwise).

(b) Each Credit Party acknowledges and agrees that any of the Credit Documents to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of the amendment and restatement of the Existing Credit Agreement, except (i) as such

enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and (ii) that rights of acceleration and the availability of equitable remedies may be limited by equitable principles of general applicability (regardless of whether enforcement is sought by proceedings in equity or at law). Each Credit Party represents and warrants that all representations and warranties contained in the Credit Documents to which it is a party or otherwise bound are true, correct and complete on and as of the Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case they were true, correct and complete on and as of such earlier date.

[Signature Pages Follow]

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

THE HILLMAN GROUP, INC.

By: _____
Name:
Title:

10590 Hamilton Avenue
Cincinnati, Ohio 45231-0012

THE HILLMAN COMPANIES, INC.

By: _____
Name:
Title:

10590 Hamilton Avenue
Cincinnati, Ohio 45231-0012

HILLMAN INVESTMENT COMPANY

By: _____
Name:
Title:

10590 Hamilton Avenue
Cincinnati, Ohio 45231-0012

MERRILL LYNCH CAPITAL, a division of
Merrill Lynch Business Financial Services Inc.,
as Issuing Lender

By: _____

Name:

Title:

222 N. LaSalle Street
16th Floor
Chicago, IL 60601

MERRILL LYNCH CAPITAL, a division of
Merrill Lynch Business Financial Services Inc.,
as Swingline Lender

By: _____

Name:

Title:

222 N. LaSalle Street
16th Floor
Chicago, IL 60601

MERRILL LYNCH CAPITAL, a division of
Merrill Lynch Business Financial Services Inc.,
as Administrative Agent

By: _____
Name:
Title:

222 N. LaSalle Street
16th Floor
Chicago, IL 60601

JPMORGAN CHASE BANK,
as Syndication Agent

By: _____
Name:
Title:

270 Park Avenue
New York, NY 10017

MERRILL LYNCH & CO., MERRILL LYNCH,
PIERCE, FENNER & SMITH INCORPORATED,
as Joint Lead Arranger and Joint
Bookrunner

By: _____
Name:
Title:

J.P. MORGAN SECURITIES INC.,
as Joint Lead Arranger and Joint
Bookrunner

By: _____
Name:
Title:

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MERRILL LYNCH CAPITAL, a division of
Merrill Lynch Business Financial Services Inc.,
as Additional Term B Lender

By: _____
Name:
Title:

222 N. LaSalle Street
16th Floor
Chicago, IL 60601

SECOND AMENDMENT TO LOAN AGREEMENT

THIS SECOND AMENDMENT TO LOAN AGREEMENT is made as of July 21, 2006 (this "Second Amendment") by and among THE HILLMAN COMPANIES, INC., ("Holdings"), HILLMAN INVESTMENT COMPANY ("Intermediate Holdings"), THE HILLMAN GROUP, INC. (the "Borrower"), ALLIED CAPITAL CORPORATION ("Allied Capital"), and MERRILL LYNCH CAPITAL CORPORATION, its successors and assigns ("Merrill Lynch" and, together with Allied Capital, the "Lenders").

WHEREAS, Holdings, Intermediate Holdings, the Borrower, and Allied Capital are parties to a Loan Agreement dated as of March 31, 2004, as amended (the "Loan Agreement");

WHEREAS, pursuant to that certain Assignment and Assumption Agreement dated as of April 12, 2004, by and among Borrower, Allied Capital and Merrill Lynch (the "Assignment Agreement"), Allied Capital sold and assigned to Merrill Lynch a portion of the Subordinated Debt evidenced by the Subordinated Debentures in favor of Allied Capital (the "Assigned Interest") and all rights and obligations of Allied Capital under the Loan Agreement with respect to such portion of the Assigned Interest on the terms and subject to the conditions set forth in the Assignment Agreement, and Merrill Lynch accepted the assignment of such rights and assumed such obligations from Allied Capital on such terms and subject to such conditions;

WHEREAS, Holdings, Intermediate Holdings and the Borrower have requested that the Lenders agree to certain amendments to the Loan Agreement, and the Lenders have agreed, subject to the terms and conditions set forth herein, to amend the Loan Agreement as herein provided;

WHEREAS, the Borrower has issued Subordinated Debentures in favor of each of Allied Capital and Merrill Lynch; and

WHEREAS, the Borrower has requested that the Lenders agree to certain amendments to the Loan Agreement and the Subordinated Debentures as herein provided. Accordingly, Holdings, Intermediate Holdings, the Borrower and the Lenders agree as follows:

**ARTICLE I
DEFINITIONS**

1. Definitions. Unless otherwise defined herein, capitalized terms defined in the Loan Agreement have the same meanings when used in this Second Amendment.

**ARTICLE II
AMENDMENTS TO THE LOAN AGREEMENT**

1. Article I of the Loan Agreement is hereby revised to include the following new definition:

““Second Amendment” means the Second Amendment to Loan Agreement dated July 21, 2006 between Holdings, Intermediate Holdings, the Borrower and the Lenders.”

2. The definition of Senior Debt contained in Article I of the Loan Agreement is hereby revised such that the reference to “\$300,000,000” contained therein shall become “\$317,500,000”.

3. Section 2.06 of the Loan Agreement is hereby amended to include a new Section 2.06(c) as follows:

“(c) Notwithstanding anything to the contrary contained herein, the Borrower shall have no obligation to pay the Repayment Charge in connection with any prepayment of the Subordinated Debentures occurring upon a Change of Control as provided in Section 2.07 below.”

4. Section 2.07 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“**Section 2.07 Mandatory Prepayment.** The Borrower’s obligations under the Subordinated Debentures and this Agreement are not assumable. Subject to the Subordination Agreement, upon (a) a Change of Control, or (b) the sale or disposition by the Sponsor Group of Equity Interests of Holdings or Intermediate Holdings with a value of \$35,000,000 or more in aggregate, each Lender shall have the right (but not the obligation) to require the Borrower to: (i) prepay all or any portion of the Subordinated Debentures held by such Lender for an amount equal to the then outstanding principal balance, all accrued but unpaid interest thereon, plus all PIK Amounts and, in the case of a prepayment required under clause (b) above, 50% of any Repayment Charge computed in accordance with Section 2.06(a), provided that any prepayment under this Section 2.07 that occurs prior to the 18 month anniversary of the date hereof shall be subject to a Repayment Charge equal to 6.0% of any principal prepaid (excluding any PIK Amount); and (ii) pay in full a corresponding portion of the other Obligations owing to such Lender, which amount shall be calculated on the date of prepayment and be payable in cash on such date. On the date of prepayment, the Borrower shall pay to the Lenders of the Subordinated Debentures being prepaid pursuant to this Section 2.07, the price specified above, by wire transfer of immediately available funds to an account designated by such Lender. Concurrently therewith, each Lender of Subordinated Debentures being prepaid in full shall deliver to the Borrower the original copy of its Subordinated Debenture or an affidavit of loss thereof in a form that is reasonably satisfactory to the Borrower. Any offer made by the Borrower pursuant to this Section 2.07 shall be irrevocable so long as the Change of Control occurs.”

5. Section 7.17(a) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“(a) Leverage Ratio. The Leverage Ratio as of the last day of the most recently ended fiscal quarter of Holdings ending on the last day of any calendar quarter ending during any period described below will not be greater than the ratio set forth below opposite the period during which such calendar quarter ends:

Calendar Quarters Ended During	Ratio
Closing Date through 3/31/05	5.64 to 1.0
4/1/05 through 9/30/05	5.46 to 1.0
10/01/05 through 3/31/06	5.18 to 1.0
4/01/06 through 9/30/06	5.14 to 1.0
10/01/06 through 6/30/07	4.85 to 1.0
7/01/07 through 6/30/08	4.56 to 1.0
1/01/09 through 12/31/09	3.70 to 1.0
1/01/10 through 12/31/10	3.13 to 1.0
1/01/11 and thereafter	2.84 to 1.0

6. Section 7.17(b) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“(b) Interest Coverage Ratio. The Interest Coverage Ratio as of the last day of the most recently ended fiscal quarter of Holdings and its Consolidated Subsidiaries ending on or about the last day of any calendar quarter ending during any period described below, in each case for the period of four consecutive fiscal quarters of the Borrower and its Consolidated Subsidiaries then ended, taken as a single accounting period, will not be less than the ratio set forth below opposite the period during which such calendar quarter ends:

Calendar Quarters Ended During	Ratio
Closing Date through 12/31/05	3.10 to 1.0
1/01/06 and thereafter	2.25 to 1.0

ARTICLE III CONDITIONS TO EFFECTIVENESS

Section 3.01 Conditions to Effectiveness of this Second Amendment. This Second Amendment, and the amendments contained herein, shall become effective as of May 15, 2006 on the date (the “Second Amendment Effective Date”) when each of the following conditions precedent have been fulfilled to the reasonable satisfaction of the Lenders:

(a) Execution and Delivery of this Second Amendment. The Lenders shall have received counterparts of this Second Amendment duly executed by Holdings, Intermediate Holdings and the Borrower.

(b) Execution of Allonge. The Lenders shall have received the Allonges to the Subordinated Debentures, duly executed by the Borrower in the form attached hereto as Exhibit A.

(c) Execution of First Amendment to Subordination Agreement. All parties to the Subordination Agreement other than the Lenders shall have executed and delivered to Lenders the First Amendment to Subordination Agreement, in the form attached hereto as Exhibit B.

(d) Acknowledgement. The Lenders shall have received counterparts of an Acknowledgement and Agreement, substantially in the form of Exhibit C hereto, duly executed by each of the Guarantors (other than Holdings, Intermediate Holdings and the Borrower) who are or are required by the Loan Agreement to be Credit Parties.

(e) Fees. The Lenders shall have received full payment from the Borrower of its fees and expenses described in Section 5.05 of this Second Amendment which are billed through the Second Amendment Effective Date.

(f) Other. The Lenders shall have received such other documents, instruments, agreements or information as may be reasonably requested by the Lenders.

Section 3.02 General Conditions. All corporate and legal proceedings relating to the transactions contemplated by this Second Amendment or in the Acknowledgement and Agreement shall be reasonably satisfactory in form and substance to the Lenders and their counsel, and the Lenders shall have received copies of all corporate proceedings, which the Lenders may reasonably have requested, such records where appropriate to be certified by the Responsible Officer. The documents referred to in this Section 3.02 shall be delivered to the Lenders no later than the Second Amendment Effective Date.

Section 3.03 Effects of this Second Amendment

(a) On the Second Amendment Effective Date, the Loan Agreement will be automatically amended to reflect the amendments thereto provided for in this Second Amendment. On and after the Second Amendment Effective Date, the rights and obligations of the parties hereto shall be governed by the Loan Agreement, as amended by this Second Amendment. Once the Second Amendment Effective Date has occurred, all references to the Loan Agreement in any document, instrument, agreement, or writing shall be deemed to refer to the Loan Agreement as amended by this Second Amendment. Promptly after the Second Amendment Effective Date occurs, the Lenders shall notify the Borrowers and the Lenders of the Second Amendment Effective Date, and such notice shall be conclusive and binding on all parties hereto.

(b) Other than as specifically provided herein, this Second Amendment shall not operate as a waiver amendment of any right, power or privilege of any Lender under the Loan Agreement or any other Subordinated Debentures Document or of any other term or condition of the Loan Agreement or any other Subordinated Debentures Document, nor shall the entering into of this Second Amendment preclude any Lender from refusing to enter into any further waivers or amendments with respect thereto. This Second Amendment is not intended by any of the parties hereto to be interpreted as a course of dealing which would in any way impair the rights or remedies of any Lender except as expressly stated herein, and no Lender shall have any obligation to extend credit to the Borrowers other than pursuant to the strict terms of the Loan Agreement and the other Subordinated Debentures Documents, as amended or supplemented to date (including by means of this Second Amendment).

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES**

Section 4.01 Representations and Warranties. In order to induce the Lenders to consent to the amendments and waivers contained herein and to enter into this Second Amendment, each of Holdings, Intermediate Holdings and the Borrower represents and warrants as set forth below:

(a) Each of Holdings, Intermediate Holdings and the Borrower reaffirms as of the Second Amendment Effective Date its covenants and agreements contained in the Loan Agreement and each other Subordinated Debentures Document to which it is a party, including, in each case, as such covenants and agreements may be modified by this Second Amendment on the Second Amendment Effective Date. Each of Holdings, Intermediate Holdings and the Borrower further confirms that each such Subordinated Debentures Document to which it is a party is, and shall continue to be, in full force and effect, and the same are hereby ratified, approved and confirmed in all respects, except as the Loan Agreement may be modified by this Second Amendment.

(b) Both immediately before and immediately after giving effect to this Second Amendment, the representations and warranties set forth in Article V of the Loan Agreement and each other Subordinated Debentures Document are, in each case, true and correct in all material respects (or in all respects in the case of such representations or warranties containing materiality qualifiers) at and as if made as of the Second Amendment Effective Date except to the extent they expressly relate to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date.

(c) This Second Amendment constitutes the legal, valid and binding obligation of each of Holdings, Intermediate Holdings and the Borrower enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(d) The parties signatory to the Acknowledgment and Agreement delivered pursuant to Section 3.01(b) of this Second Amendment constitute all of the Persons who (together with Holdings, Intermediate Holdings and the Borrower) are or are required under the terms of the Subordinated Debentures Documents to be Credit Parties.

(e) The written statements and information contained in this Second Amendment and the other documents, certificates and statements furnished to the Lenders on or prior to the Second Amendment Effective Date by or on behalf of any Credit Party for use in connection with the transactions contemplated by this Second Amendment, taken as a whole, do not, as of the Second Amendment Effective Date, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading.

(f) The Borrower acknowledges that, as of July 21, 2006, after giving effect to the provisions of this Amendment, (i) the outstanding principal amount of the Subordinated Debenture in favor of Allied Capital is \$44,330,246.12 (inclusive of all PIK Amounts) and accrued and unpaid cash interest thereon is \$87,114.93 and (ii) the outstanding principal amount of the Subordinated Debenture in favor of Merrill Lynch is \$5,240,267.51 (inclusive of all PIK Amounts) and accrued and unpaid cash interest thereon is \$8,733.77.

**ARTICLE V
MISCELLANEOUS**

Section 5.01 Headings. The various headings of this Second Amendment are inserted for convenience only and shall not affect the meaning or interpretation of this Second Amendment or any provisions hereof.

Section 5.02 Execution in Counterparts. This Second Amendment may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. A counterpart hereof executed and delivered by facsimile shall be effective as an original.

Section 5.03 Successors and Assigns. This Second Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 5.04 Governing Law: Entire Agreement. THIS SECOND AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. This Second Amendment and the other Subordinated Debentures Documents constitute the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any prior agreements, written or oral, with respect thereto.

Section 5.05 Fees and Expenses. The Borrower agrees to pay all reasonable out-of-pocket expenses incurred by the Lenders in connection with the preparation, negotiation, execution, delivery and enforcement of this Second Amendment and the other documents and instruments referred to herein or contemplated hereby, including, but not limited to, the fees and disbursements of DLA Piper Rudnick Gray Cary US LLP, counsel to Allied Capital.

Section 5.06 Subordinated Debentures Document Pursuant to Loan Agreement. This Second Amendment is a Subordinated Debentures Document executed pursuant to the Loan Agreement and shall be construed, administered and applied in accordance with all of the terms and provisions of the Loan Agreement (and, following the date hereof, the Loan Agreement, as amended hereby).

[Signature Pages Follow]

IN WITNESS WHEREOF, the signatories hereto have caused this Second Amendment to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

THE BORROWER

THE HILLMAN GROUP, INC.

By: _____
Name:
Title:

HOLDINGS

THE HILLMAN COMPANIES, INC.

By: _____
Name:
Title:

INTERMEDIATE HOLDINGS

THE HILLMAN INVESTMENT COMPANY

By: _____
Name:
Title:

LENDERS

ALLIED CAPITAL CORPORATION

By: _____
Name:
Title:

MERRILL LYNCH CAPITAL CORPORATION

By: _____
Name:
Title: