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SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Form 10-Q

Quarterly Report Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

For the Quarterly Period Ended June 30, 2004

Commission File Number 0-16379

Clean Harbors, Inc.

(Exact name of registrant as specified in its charter)

Massachusetts	**04-2997780**
(State of Incorporation)	**(IRS Employer Identification No.)**
1501 Washington Street, Braintree, MA	**02184-7535**
(Address of Principal Executive Offices)	**(Zip Code)**

(781) 849-1800 ext. 4454
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding twelve months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes ☒ No ☐

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common Stock, $.01 par value	**14,084,982**
(Class)	**(Outstanding at July 29, 2004)**

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CLEAN HARBORS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

ASSETS

(dollars in thousands)

	June 30, 2004	December 31, 2003
	(Unaudited)	
Current assets:		
Cash and cash equivalents	$ 17,389	$ 6,331
Restricted cash	3,913	—
Accounts receivable, net of allowance for doubtful accounts of $3,136 and $3,572, respectively	113,340	114,429
Unbilled accounts receivable	8,251	9,476
Deferred costs	5,425	5,395
Prepaid expenses	10,040	8,582
Supplies inventories	9,774	9,018
Deferred tax asset	171	178
Properties held for sale	12,285	12,690
Total current assets	180,588	166,099
Property, plant, and equipment:		
Land	14,453	14,492
Landfill assets	4,689	3,579
Buildings and improvements	85,243	84,649
Vehicles and equipment	168,732	164,693
Furniture and fixtures	2,283	2,604
Construction in progress	34,294	25,931
Non-landfill asset retirement costs	990	994
	310,684	296,942
Less—accumulated depreciation and amortization	139,986	130,400
	170,698	166,542
Other assets:		
Restricted cash	—	88,817
Deferred financing costs	9,556	6,297
Goodwill	19,032	19,032
Permits and other intangibles, net of accumulated amortization of $19,692 and $17,630, respectively	76,728	79,811
Deferred tax asset	6,356	6,594
Other	8,083	6,967
	119,755	207,518
Total assets	$ 471,041	$ 540,159

The accompanying notes are an integral part of these consolidated financial statements.

CLEAN HARBORS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)
(dollars in thousands)

	June 30, 2004 (Unaudited)	December 31, 2003
Current liabilities:		
Uncashed checks	$ 4,805	$ 5,983
Revolving credit facility	—	35,291
Current portion of capital lease obligations	1,459	1,207
Accounts payable	59,098	60,611
Accrued disposal costs	2,466	2,021
Deferred revenue	23,379	22,799
Other accrued expenses	34,863	32,240
Current portion of environmental liabilities	18,648	21,282
Income taxes payable	5,050	2,623
Total current liabilities	149,768	184,057
Other liabilities:		
Environmental liabilities, less current portion	163,516	161,849
Long-term obligations, less current maturities	148,045	147,209
Capital lease obligations, less current portion	3,880	3,412
Other long-term liabilities	8,253	18,055
Accrued pension cost	609	633
Total other liabilities	324,303	331,158
Commitments and contingent liabilities		
Redeemable Series C Convertible Preferred Stock, $.01 par value: Authorized 25,000 shares; issued and outstanding 0 and 25,000 shares, respectively, net of unamortized issuance costs and fair value of embedded derivative	—	15,631
Stockholders' equity (deficit):		
Preferred stock, $.01 par value:		
Series A convertible preferred stock: Authorized 894,585; issued and outstanding – none	—	—
Series B convertible preferred stock: Authorized 156,416 shares; issued and outstanding 112,000 shares (liquidation preference of $5.6 million)	1	1
Common stock, $.01 par value:		
Authorized 20,000,000 shares; issued and outstanding 14,064,649 and 13,911,212 shares, respectively	141	139
Additional paid-in capital	61,843	63,642
Accumulated other comprehensive income	5,216	6,452
Accumulated deficit	(70,231)	(60,921)
Total stockholders' (deficit) equity	(3,030)	9,313
Total liabilities, redeemable convertible preferred stock and stockholders' (deficit) equity	$ 471,041	$540,159

The accompanying notes are an integral part of these consolidated financial statements.

CLEAN HARBORS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
Unaudited
(in thousands except per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Revenues	$161,631	$172,035	$304,388	$314,340
Cost of revenues	115,842	131,797	223,302	238,411
Selling, general and administrative expenses	27,550	30,736	50,998	57,800
Accretion of environmental liabilities	2,619	2,783	5,207	5,516
Depreciation and amortization	6,256	6,439	11,661	13,087
Restructuring	—	—	—	(124)
Income (loss) from operations	9,364	280	13,220	(350)
Other income (expense)	(6,635)	162	(1,104)	154
Loss on refinancing	(7,099)	—	(7,099)	—
Interest (expense), net	(5,443)	(5,979)	(10,801)	(11,489)
Loss before provision for income taxes and cumulative effect of change in accounting principle	(9,813)	(5,537)	(5,784)	(11,685)
Provision for income taxes	2,314	1,262	3,526	2,250
Net loss before cumulative effect of change in accounting principle	(12,127)	(6,799)	(9,310)	(13,935)
Cumulative effect of change in accounting principle, net of tax	—	—	—	66
Net loss	(12,127)	(6,799)	(9,310)	(14,001)
Redemption of Series C preferred stock and dividends and accretion on preferred stock	10,761	814	11,616	1,618
Net loss attributable to common shareholders	$ (22,888)	$ (7,613)	$(20,926)	$(15,619)
Basic and diluted loss per share:				
Loss before cumulative effect of change in accounting principle	$ (1.63)	$ (0.57)	$ (1.49)	$ (1.17)
Cumulative effect of change in accounting principle, net of tax	$ —	$ —	$ —	$ —
Loss attributable to common shareholders	$ (1.63)	$ (0.57)	$ (1.49)	$ (1.17)
Weighted average common shares outstanding	14,044	13,436	14,002	13,353

The accompanying notes are an integral part of these consolidated financial statements.

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CLEAN HARBORS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
Unaudited
(in thousands)

	Six Months Ended June 30,	
	2004	2003
Cash flows from operating activities:		
Net loss	$ (9,310)	$ (14,001)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	11,661	13,087
Cumulative effect of change in accounting principle, net of tax	—	66
Allowance for doubtful accounts	479	1,082
Amortization of deferred financing costs	1,558	1,069
Accretion of environmental liabilities	5,207	5,516
(Gain) loss on sale of fixed assets	(486)	292
Deferred income taxes	—	44
Stock options expensed	—	14
Loss on refinancing	7,099	—
(Gain) loss on embedded derivative	1,590	(446)
Foreign currency (gain) loss on intercompany transactions	(600)	801
Changes in assets and liabilities, net of acquisition:		
Accounts and other receivables	259	8,596
Unbilled accounts receivable	1,159	3,117
Deferred costs	(54)	1,161
Prepaid expenses	(1,477)	2,210
Supplies inventories	(776)	(78)
Other assets	(1,170)	(1,229)
Accounts payable	(945)	1,934
Environmental liabilities	(5,715)	(4,278)
Deferred revenue	699	(6,571)
Accrued disposal costs	464	(78)
Other accrued expenses	2,878	91
Income taxes payable	2,510	(1,295)
Net cash provided by operating activities	15,030	11,104
Cash flows from investing activities:		
CSD acquisition costs	—	(250)
Additions to property, plant and equipment	(12,887)	(18,435)
Proceeds from sale of restricted investments	89,294	498
Cost of restricted investments purchased	(4,390)	(23,908)
Proceeds from sale of fixed assets	665	241
Net cash provided by (used in) investing activities	72,682	(41,854)
Cash flows from financing activities:		
Repayments on Senior Loans	(107,209)	(351)
Repayments of Subordinated Loans	(40,000)	—
Net borrowings (repayments) under revolving credit facility	(35,168)	22,459
Change in uncashed checks	(1,104)	890
Deferred financing costs incurred	(10,164)	(562)
Proceeds from exercise of stock options	155	367
Dividend payments on preferred stock	(1,963)	(974)
Proceeds from employee stock purchase plan	247	256
Payments on capital leases	(730)	(245)
Issuance of Senior Secured Notes	148,045	—
Redemption of Series C Convertible Preferred Stock	(25,000)	—
Cash paid in lieu of warrants	(363)	—
Debt extinguishment payments	(3,420)	—
Net cash provided by (used in) financing activities	(76,674)	21,840

Increase (decrease) in cash and cash equivalents	11,038	(8,910)
Effect of exchange rate change on cash	20	633
Cash and cash equivalents, beginning of period	6,331	13,682
Cash and cash equivalents, end of period	$ 17,389	$ 5,405
Supplemental information:		
Non-cash investing and financing activities:		
Property, plant and equipment accrued	$ 1,368	$ 1,353
New capital lease obligations	$ 1,469	$ 539

The accompanying notes are an integral part of these consolidated financial statements.

CLEAN HARBORS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands)

	Series B Preferred Stock		Common Stock						
	Number of Shares	$0.01 Par Value	Number of Shares	$0.01 Par Value	Additional Paid-in Capital	Comprehensive Loss	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
Balance at December 31, 2003	112	$ 1	13,911	$ 139	$63,642		$ 6,452	$(60,921)	$ 9,313
Net loss	—	—	—	—	—	$ (9,310)	—	(9,310)	(9,310)
Foreign currency translation	—	—	—	—	—	(1,236)	(1,236)	—	(1,236)
Comprehensive loss						$ (10,546)			
Preferred stock dividends:									
Series B	—	—	28	—	—		—	—	—
Series C	—	—	—	—	(821)		—	—	(821)
Issuance of warrants	—	—	—	—	9,193		—	—	9,193
Proceeds from exercise of stock options	—	—	71	1	154		—	—	155
Employee stock purchase plan	—	—	55	1	246		—	—	247
Redemption of Series C preferred stock	—	—	—	—	(9,864)		—	—	(9,864)
Amortization of preferred stock discount and issuance costs	—	—	—	—	(707)		—	—	(707)
Balance at June 30, 2004	112	$ 1	14,065	$ 141	$61,843		$ 5,216	$ (70,231)	$ (3,030)

The accompanying notes are an integral part of these consolidated financial statements.

CLEAN HARBORS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(1) Basis of Presentation

The accompanying consolidated interim financial statements include the accounts of Clean Harbors, Inc. and its wholly-owned subsidiaries (collectively, "Clean Harbors" or the "Company") and have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission and, in the opinion of management, include all adjustments which, except as described elsewhere herein, are of a normal recurring nature, necessary for a fair presentation of the financial position, results of operations, and cash flows for the periods presented. The results for interim periods are not necessarily indicative of results for the entire year. The financial statements presented herein should be read in connection with the financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2003.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires the Company's management to make certain estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and disclosure of the contingent assets and liabilities at the date of the financial statements. These estimates and assumptions will also affect the reported amounts of certain revenues and expenses during the reporting period. Actual results could differ materially based on any changes in the estimates and assumptions that the Company uses in the preparation of its financial statements. Additionally, the estimates and assumptions used in determining landfill airspace amortization rates per cubic yard, capping, closure and post-closure liabilities as well as environmental remediation liabilities require significant engineering and accounting input. The Company reviews these estimates and assumptions no less than every three years. In many circumstances, the ultimate outcome of these estimates and assumptions may not be known for decades into the future. Actual results could differ materially from these estimates and assumptions due to changes in environmental-related regulations or future operational plans, and the inherent imprecision associated with estimating matters so far into the future. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this report.

Certain reclassifications have been made in the prior periods' Consolidated Financial Statements to conform to the presentation for the three- and six-month periods ended June 30, 2004.

(2) Acquisition

As more fully described in the Annual Report on Form 10-K for the year ended December 31, 2003, the Company purchased from Safety-Kleen Services, Inc. (the "Seller") and certain of the Seller's domestic subsidiaries substantially all of the assets of the Chemical Services Division (the "CSD") of Safety-Kleen Corp. ("Safety-Kleen"), effective September 7, 2002. The sale included the operating assets of certain of the Seller's subsidiaries in the United States and the stock of five of the Seller's subsidiaries in Canada.

In accordance with the Acquisition Agreement between the Seller and the Company dated February 22, 2002, as amended through September 6, 2002, the Company purchased the assets of the CSD for $26.6 million in net cash, and incurred direct costs related to the transaction of $9.7 million for a total purchase price of $36.3 million. In addition, the Company assumed with the transaction certain environmental liabilities valued at $184.5 million.

In connection with the acquisition of the CSD assets, the Company recorded integration liabilities of $12.6 million (after giving effect to subsequent net changes in estimates) which consisted primarily of lease costs, severance, environmental closure and other exit costs to close duplicative facilities and functions. Groups of employees severed and to be severed consist primarily of duplicative selling, general and administrative personnel and personnel at offices which were closed. The following table summarizes the purchase accounting liabilities recorded in connection with the acquisition of the CSD assets (dollars in thousands):

	Severance		Facilities		
	Number of Employees	Liability	Number of Facilities	Liability	Total
Balance at December 31, 2003	52	$ 676	9	$ 2,931	$ 3,607
Net change in estimate	(10)	—	—	65	65
Utilized in the quarter ended March 31, 2004	(3)	(184)	—	(499)	(683)
Utilized in the quarter ended June 30, 2004	(15)	(154)	—	(111)	(265)
Interest accretion	—	—	—	136	136
Balance at June 30, 2004	24	$ 338	9	$2,522	$2,860

CLEAN HARBORS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — CONTINUED

(3) Significant Accounting Policies

(a) New Accounting Pronouncements

In January 2003, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities." FIN 46 requires that unconsolidated variable interest entities must be consolidated by their primary beneficiaries. A primary beneficiary is the party that absorbs a majority of the entity's expected losses or residual benefits. FIN 46 applies immediately to variable interest entities created after January 31, 2003. In December 2003, the FASB issued FIN 46-R. FIN 46-R deferred to March 15, 2004 the effective date for variable interest entities created before January 31, 2003. FIN 46 and FIN 46-R will have no impact on the Company's results of operations since it has no variable interest entities.

(b) Stock Options

The Company applies Accounting Principles Board ("APB") Opinion No. 25 and related Interpretations in accounting for its stock-based employee compensation plans. Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation" defines a fair value method of accounting for stock options and other equity instruments. Under the fair value method, compensation cost is measured at the grant date based on the fair value of the award and is recognized over the service period, which is usually the vesting period. The Company elected to continue to apply the accounting provisions of APB Opinion No. 25 for stock options. Accordingly, no stock-based employee compensation cost is reflected in net income, as all options granted under those plans have an exercise price equal to the market value of the underlying common stock on the date of grant. Had compensation cost for the Company's stock option grants been determined based on the fair value at the grant dates, as calculated in accordance with SFAS No. 123, the Company's net loss and net loss per common share for the three and six month periods ended June 30, 2004 and 2003, would approximate the pro forma amounts as compared to the amounts reported (in thousands except for per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Net loss attributable to common shareholders	$(22,888)	$(7,613)	$(20,926)	$(15,619)
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards net of related tax effects	496	568	1,008	904
Pro forma net loss attributable to common shareholders	$ (23,384)	$(8,181)	$ (21,934)	$ (16,523)
Loss per share:				
Basic and diluted as reported	$ (1.63)	$ (0.57)	$ (1.49)	$ (1.17)
Basic pro forma	$ (1.67)	$ (0.61)	$ (1.57)	$ (1.24)

(4) Restricted Cash

At June 30, 2004 and December 31, 2003, restricted cash consisted of the following (in thousands):

	June 30, 2004	December 31, 2003
Cash collateral for letter of credit facility – current	$3,913	$ —
Cash collateral for letter of credit facility – non-current	—	88,817
	$3,913	$ 88,817

Operators of hazardous waste handling facilities are required by federal and state regulations to provide financial assurance for closure and post-closure care of those facilities should those facilities cease operation. Closure would include the cost of removing the waste stored at the facility which ceased operating, sending such material to another site for disposal, and performing certain procedures for decontamination of the facility. The Company has placed most of the required financial assurance through Steadfast Insurance Company, which requires letters of credit as collateral to its financial assurance

CLEAN HARBORS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — CONTINUED

obligations. At December 31, 2003, the Company had a Letter of Credit Facility (the "L/C Facility") under an Agreement dated September 6, 2002 between the Company and Fleet National Bank ("Fleet"). The L/C Facility Agreement provided that Fleet would issue up to $100.0 million of letters of credit at the Company's request provided that the Company posted collateral equal to 103% of the amount of the outstanding letters of credit. As further discussed in Note 6, "Financing Arrangements," on June 30, 2004, the L/C Facility was replaced with a synthetic letter of credit facility (the "Synthetic LC Facility"). Under the Synthetic LC Facility, the Company is not required to post cash collateral. On June 30, 2004, the $88.9 million of restricted cash then on deposit was released to the Company.

As described in the Annual Report on Form 10-K for the year ended December 31, 2003, the Company previously had outstanding a $100.0 million revolving credit facility (the "Revolving Credit Facility") that allowed the Company to borrow up to $100.0 million in cash and letters of credit with Congress Financial Corporation ("Congress"). On June 30, 2004, the Company posted $3.9 million of restricted cash with Congress to support $3.6 million of letters of credit then outstanding that for administrative reasons could not be replaced with letters of credit under the Synthetic LC Facility, or as discussed in Note 6 under "Financing Arrangements," the Revolving Facility. The Company anticipates that by September 30, 2004 the letters of credit outstanding with Congress will be replaced with other letters of credit, allowing the $3.9 million of restricted cash at June 30, 2004 to be released for the Company's general use.

(5) Properties Held for Sale

As part of its plan to integrate the activities of the CSD into its operation, the Company determined that certain acquired properties were no longer needed for its operations. The Company decided to sell these acquired properties; accordingly, the acquired surplus properties were transferred to properties held for sale. In the allocation of the purchase price of the CSD acquisition, the Company valued properties held for sale at the current appraised market value less estimated selling costs. Properties held for sale include only those properties that the Company believes can be sold within the next twelve months based on current market conditions and the asking price.

During the three month period ended March 31, 2004, the Company sold one of the properties for $0.6 million, net of selling costs. The gain on the sale of approximately $0.2 million was included in other income (expense).

(6) Financing Arrangements

The following table is a summary of the Company's financing arrangements:

	June 30, 2004	December 31, 2003
	(in thousands)	
Revolving Facility with a financial institution, bearing interest at either the U.S. or Canadian prime rate (3.50% and 3.75%, respectively, at June 30, 2004) or the Eurodollar rate (1.40% at June 30, 2004), depending on the currency of the underlying loan, plus 1.50%, collateralized by accounts receivable	$ —	$ —
Senior Secured Notes, bearing interest at 11.25%, collateralized by a second-priority lien on substantially all of the Company's assets within the United Sates except for accounts receivable	150,000	—
Revolving Credit Facility with a financial institution, bearing interest at LIBOR (1.40% at June 30, 2004) plus 3.50% or the U.S. or Canadian prime rate (3.50% and 3.75%, respectively, at June 30, 2004) plus 0.50% at the Company's election, collateralized by a first security interest in accounts receivable and a second security interest in substantially all other assets	—	35,291
Senior Loans, bearing interest at LIBOR (1.40% at June 30, 2004) plus 7.75%, collateralized by a first security or mortgage interest in substantially all of the Company's assets except for accounts receivable	—	107,209
Subordinated Loans, bearing interest at 22.50%, collateralized by a first security or mortgage interest in substantially all of the Company's assets except for accounts receivable	—	40,000
	150,000	182,500
Less unamortized issue discount	1,955	—
Less obligations classified as current	—	35,291
Long-term obligations	$ 148,045	$ 147,209

CLEAN HARBORS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — CONTINUED

As described in the Annual Report on Form 10-K for the year ended December 31, 2003, the Company previously had outstanding a $100.0 million three-year revolving credit facility (the "Revolving Credit Facility"), $115.0 million of three-year non-amortizing term loans (the "Senior Loans") and $40.0 million of five-year non-amortizing subordinated loans (the "Subordinated Loans"). In addition to such financings, the Company had established a letter of credit facility (the "L/C Facility") under which the Company could obtain up to $100.0 million of letters of credit by providing cash collateral equal to 103% of the amount of such outstanding letters of credit. On June 30, 2004, the Company's debt under the Revolving Credit Facility, the Senior Loans and the Subordinated Loans was replaced by $150.0 million of eight-year Senior Secured Notes (the "Senior Secured Notes") and a $30.0 million revolving credit facility (the "Revolving Facility") as described below. Additionally, the L/C Facility was replaced with a synthetic letter of credit facility (the "Synthetic LC Facility") whereby the Company may obtain up to $90.0 million of letters of credit as described below.

The principal terms of the Senior Secured Notes, the Revolving Facility, and the Synthetic LC Facility are as follows:

Senior Secured Notes. The Senior Secured Notes were issued under an Indenture dated June 30, 2004 (the "Indenture"). The Senior Secured Notes bear interest at 11.25% and mature on July 15, 2012. The Senior Secured Notes were issued at a $2.0 million discount that results in an effective yield of 11.5%. Interest is payable semiannually in cash on each January 15 and July 15, commencing on January 15, 2005.

The Senior Secured Notes are secured by a second-priority lien on all of the domestic assets of the Company and its domestic subsidiaries that secure the Company's reimbursement obligations under the Synthetic LC Facility on a first-priority basis (as described below); provided that such assets do not include any capital stock, notes, instruments, other equity interests of any of the Company's subsidiaries, accounts receivable, and certain other excluded collateral as provided in the Indenture. The Senior Secured Notes are jointly and severally guaranteed on a senior secured second-lien basis by substantially all of the Company's existing and future domestic subsidiaries. The Senior Secured Notes are not guaranteed by the Company's foreign subsidiaries.

The Indenture provides for certain covenants, the most restrictive of which requires the Company, within 120 days after the close of each twelve-month period ending on June 30 of each year (beginning June 30, 2005) to apply an amount equal to 50% of the period's Excess Cash Flow (as defined below) to either prepay, repay, redeem or purchase its first-lien obligations under the Revolving Facility and Synthetic LC Facility or the offer to the repurchase of all or part of the then outstanding Senior Secured Notes. "Excess Cash Flow" is defined in the Indenture as consolidated EBITDA less interest expense, all taxes paid or accrued in the period, capital expenditures made in cash during the period, and all cash spent on environmental monitoring, remediation or relating to environmental liabilities of the Company.

The $6.2 million cost associated with the issuance of the Senior Secured Notes was recorded as a component of deferred financing costs and is being amortized to interest expense over the life of the Senior Secured Notes.

Revolving Facility. Both the Revolving Facility and the Synthetic LC Facility were established under a Loan and Security Agreement dated June 30, 2004 (the "Credit Agreement") among the Company, Fleet Capital Corporation as agent for the Revolving Lenders thereunder, Credit Suisse First Boston as agent for the letter of credit facility lenders (the "LC Facility Lenders") thereunder, and certain other parties. The Revolving Facility allows the Company to borrow up to $30.0 million in cash, based upon a formula of eligible accounts receivable. This total is separated into two lines of credit, namely a line for the Company and its U.S. subsidiaries equal to $24.7 million and a line for the Company's Canadian subsidiaries of $5.3 million. The Revolving Facility also allows the Company to have issued up to $10.0 million of letters of credit, with the outstanding amount of such letters of credit reducing the maximum amount of borrowings permitted under the Revolving Facility. At June 30, 2004, the Company had no borrowings and $1.5 million of letters of credit outstanding under the Revolving Facility, and the Company had approximately $28.5 million available to borrow. Amounts outstanding under the Revolving Facility bear interest at an annual rate of either the U.S. or Canadian prime rate or the Eurodollar rate (depending on the currency of the underlying loan) plus 1.50%. The Credit Agreement requires the Company to pay an unused line fee of 0.125% per annum on the unused portion of the Revolving Facility. The Revolving Facility matures on June 30, 2009.

The Revolving Facility is secured by a first security interest in accounts receivable and a second security interest in substantially all other assets. The Revolving Facility prohibits the payment of dividends on the Company's common stock but allows the payment of dividends on the Company's Series B Preferred Stock.

Under the Credit Agreement, the Company is required to maintain a maximum Leverage Ratio (as defined below) of no more than 3.00 to 1.0, 2.80 to 1.0 and 2.55 to 1.0 for the four-quarter periods ending September 30, 2004, December 31, 2004 and

CLEAN HARBORS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — CONTINUED

March 31, 2005, respectively. The maximum Leverage Ratio is then reduced to no more than 2.50 to 1.0 for the four-quarter period ending June 30, 2005, and then, in approximately equal increments, to no more than 2.30 to 1.0 for the four-quarter period ending December 31, 2008, and to no more than 2.25 to 1.0 for each succeeding quarter. The Leverage Ratio is defined as the ratio of the consolidated indebtedness of the Company to its consolidated EBITDA achieved for the latest four-quarter period.

The Company is also required under the Credit Agreement to maintain a minimum Interest Coverage Ratio (as defined below) of not less than 2.25 to 1.0, 2.40 to 1.0 and 2.65 to 1.0 for the four-quarter periods ending September 30, 2004, December 31, 2004 and March 31, 2005, respectively. The minimum Interest Coverage Ratio is then increased to not less than 2.70 to 1.0 for the four-quarter period ending June 30, 2005, and then, in approximately equal increments, to not less than 2.85 to 1.0 for the four-quarter period ending December 31, 2006 through December 31, 2008, and not less than 3.00 to 1.0 for each succeeding four-quarter period. The Interest Coverage Ratio is defined as the ratio of the Company's consolidated EBITDA to its consolidated interest expense.

The Company is also required to maintain a fixed charge coverage ratio of not less than 1.0 to 1.0 for each four-quarter period, commencing with the quarter ending December 31, 2004. The Company must also achieve at least $15.0 million in consolidated EBITDA for the quarter ending September 30, 2004.

The $0.3 million cost associated with the issuance of the Revolving Facility was recorded as a component of deferred financing costs and is being amortized to interest expense over the life of the Revolving Facility.

Synthetic LC Facility. The Synthetic LC Facility provides that Credit Suisse First Boston (the "LC Facility Issuing Bank") will issue up to $90.0 million of letters of credit at the Company's request. The LC Facility requires that the LC Facility Lenders maintain a cash account (the "Credit-Linked Account") to collateralize the Company's outstanding letters of credit. Should any such letter of credit be drawn in the future and the Company fail to satisfy its reimbursement obligation, the LC Facility Issuing Bank would be entitled to draw upon the appropriate portion of the $90.0 million in cash which the LC Facility Lenders under the Credit Agreement have deposited into the Credit-Linked Account. Acting through the LC Facility Agent, the LC Facility Lenders would then have the right to exercise their rights as first-priority lien holders (second-priority as to receivables) on substantially all of the assets of the Company and its domestic subsidiaries. The Company has no right, title or interest in the Credit-Linked Account established under the Credit Agreement for purposes of the Synthetic LC Facility. The Company is required to pay (i) a quarterly participation fee at the annual rate of 5.35% on the average daily balance in the Credit-Linked Account and (ii) a quarterly fronting fee at the annual rate of 0.30% of the average daily aggregate maximum amount available under the Synthetic LC Facility. At June 30, 2004, letters of credit outstanding under the Synthetic LC facility were $89.4 million. The term of the Synthetic LC Facility will expire on June 30, 2009.

The $3.1 million cost associated with the issuance of the Synthetic LC Facility was recorded as a component of deferred financing costs and is being amortized to interest expense over the life of the Synthetic LC Facility.

EBITDA. In addition to disclosing financial results that are determined in accordance with generally accepted accounting principles ("GAAP"), the Company uses the non-GAAP measure EBITDA. As described above, the principal financial covenants to which the Company is subject under the Credit Agreement are based upon the level of EBITDA (as defined in the Credit Agreement) achieved by the Company in specified periods. Furthermore, the Company believes that EBITDA is useful to investors because it is an indicator of the strength and performance of the ongoing business operations, including the Company's ability to fund capital expenditures and service debt. The Company also uses EBITDA to award management incentive bonuses based on the level of EBITDA attained.

EBITDA should not be considered an alternative to net income or loss or other measures calculated in accordance with accounting principles generally accepted in the United States as an indicator of operating performance or to cash flows from operating, investing, or financing activities as a measure of liquidity. EBITDA does not reflect working capital changes, cash expenditures for interest, taxes, capital improvements or principal payments on indebtedness. Furthermore, the Company's measurement of EBITDA might be inconsistent with similar measures presented by other companies.

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Because of certain non-recurring adjustments to net income (loss) which occurred during the six months ended March 31, 2004, the Credit Agreement defines EBITDA for the fiscal quarters ended December 31, 2003 and March 31, 2004, as being in the agreed amounts of $16.0 million and $12.1 million, respectively. EBITDA under the Credit Agreement for the three months ended June 30, 2004 is calculated as follows (in thousands):

	Three Months Ended June 30, 2004
Net loss	$ (12,127)
Gain on sale of fixed assets	(242)
Change in value of embedded derivative	6,877
Loss on refinancing	7,099
Accretion of environmental liabilities	2,619
Interest expense, net	5,443
Provision for income taxes	2,314
Depreciation and amortization	6,256
Other non-recurring refinancing-related expenses	1,126
EBITDA	$ 19,365

The following reconciles EBITDA to cash provided by operations for the three months ended June 30, 2004 (in thousands):

	Three Months Ended June 30, 2004
EBITDA	$ 19,365
Adjustments to reconcile EBITDA from net cash provided by operations:	
Interest expense, net	(5,443)
Provision for income taxes	(2,314)
Allowance for doubtful accounts	334
Amortization of deferred financing costs	805
Foreign currency gain on intercompany transactions	(546)
Other non-recurring refinancing related expenses	(1,126)
Changes in assets and liabilities:	
Accounts receivable	(4,272)
Unbilled accounts receivable	(2,217)
Prepaid expenses	1,317
Other assets	(1,435)
Accounts payable	4,105
Environmental liabilities	(2,678)
Other accrued expenses	2,776
Income tax payable	742
Other, net	(472)
Net cash provided by operating activities	$ 8,941

(7) Legal Proceedings and Contingencies

As of the filing date of this report, the following discussions update the material changes to the "Legal Proceedings" described in Note 9 to the Company's financial statements as of December 31, 2003 included in the Annual Report on Form 10-K as filed with the Securities and Exchange Commission on March 15, 2004.

Legal Proceedings Assumed In Connection with Acquisition of CSD Assets

Tanner Act Proceeding. As further discussed in the Annual Report on Form 10-K for the year ended December 31, 2003, in 1999 the Conditional Use Permit, or CUP, issued by Kern County, California for the Seller's Buttonwillow landfill was challenged by a local interest group, Padres Hacia Una Lina Vida Mejor and its individual members. The proceeding was

initiated under the Tanner Act, a California statute that enables citizens to appeal local land use decisions regarding hazardous waste facilities under California Health and Safety Code Section 25199-25199.14. Under the Tanner Act, the Governor or a designee, upon making certain findings, must appoint a 7-member Appeal Board that is empowered to convene hearings and if necessary require the local agency to modify its land use decision in accordance with the Appeal Board decision.

On May 19, 2004, the parties, including legal counsel for Kern County, presented the settlement agreement to the Appeal Board with a joint request that the panel stay its appeal proceedings until such time as the Kern County Board of Supervisors can amend the CUP to incorporate the salient provisions of the settlement agreement. It is expected that the Kern County Board of Supervisors will act on the request sometime in early fall 2004. The parties have agreed that favorable action by Kern County will render the appeal ripe for dismissal by the Appeal Board. As a result of this settlement, the Company recorded a gain of $0.3 million in the quarter ended March 31, 2004.

Properties Included in CSD Assets. As further discussed in the Form 10-K for the year ended December 31, 2003, the two properties included in the CSD assets which are now subject to Superfund proceedings and for which one or more of the Sellers has been designated as a PRP are located at 2549 North New York Street in Wichita, Kansas, and at 411 Burton Road in Lexington, South Carolina. With respect to the 411 Burton Road property, on February 7, 2003 the Company entered into a Consent Decree, which has been approved by the United States District Court, settling the South Carolina claims and lawsuit. The Consent Decree required that the Company make two installment payments to the South Carolina regulators. The Company has now paid both installment payments in full to honor its obligations.

The CSD assets also included a former hazardous waste incinerator and landfill in Baton Rouge, Louisiana ("BR Facility") currently undergoing remediation pursuant to an order issued by the Louisiana Department of Environmental Quality. In December 2003, the Company received an information request from the United States EPA pursuant to the Superfund Act concerning the Devil's Swamp Lake Site ("Devil's Swamp") in East Baton Rouge Parish, Louisiana. On March 8, 2004, the EPA proposed to list Devil's Swamp on the National Priorities List for further investigations and possible remediation. Devil's Swamp includes a lake, located downstream of an outfall ditch where wastewaters and stormwaters have been discharged from the BR Facility, as well as extensive swamplands adjacent to it. Contaminants of concern cited by the EPA as a basis for listing the site include substances of the kind found in wastewaters discharged from the BR Facility in past operations. While the Company's ongoing corrective actions at the BR Facility may be sufficient to address the EPA's concerns, there can be no guarantee that if the Company is identified as a PRP at Devil's Swamp, additional action will not be required and that the Company will not incur material costs. The Company cannot now estimate its liability for Devil's Swamp; accordingly, the Company has accrued no liability for remediation of Devil's Swamp beyond what was already accrued pertaining to the ongoing corrective actions.

Other Legal Proceedings Related to CSD Assets

In addition to the legal proceedings which the Company assumed in connection with the acquisition of the CSD assets, one lawsuit has been filed against the Company subsequent to the acquisition based in part upon allegations relating to its current operations of a former CSD facility. As further discussed in the Form 10-K for the year ended December 31, 2003, in December 2003, a lawsuit was filed in the 18 th Judicial District Court in Iberville Parish, Louisiana, against the Company's subsidiary which acquired and now operates a deep injection well facility near Plaquemine, Louisiana. This lawsuit was brought under the citizen suit provisions of the Louisiana Environmental Quality Act. The lawsuit alleges that the facility is in violation of state law by disposing of hazardous waste into an underground injection well that the plaintiffs allege is located within the banks or boundaries of a body of surface water within the jurisdiction of the State of Louisiana, among other allegations. On July 15, 2004 the Plaquemine facility received a motion seeking an order enforcing a temporary restraining order enjoining the Plaquemine facility "…from allowing unauthorized discharges, releases and migrations of pollutants, hazardous waste, and constituents of concern" from the new area of concern, based on soil and water sampling results obtained by plaintiffs' attorneys. No date for a hearing on this motion has been set by the court at present. Although the Company has established reserves to cover its estimated legal costs to be incurred in connection with this proceeding, this litigation is in its very preliminary stages and the Company is therefore unable to estimate any other potential liability relating to the lawsuit.

State Enforcement Actions.

Chicago Facility. On February 12, 2004, the Illinois Attorney General's Office notified the Company's subsidiary which owns its Chicago facility that an enforcement action was being initiated alleging that the Chicago facility has violated its operating permit, certain Illinois Pollution Control Board regulations, and allegedly applicable provisions of the National

Emission Standards for Hazardous Air Pollutants. The enforcement action raises allegations pertaining to adequate capture and control of air emissions, timely notification regarding the applicability and compliance status of affected air emission sources, ensuring that devices were designed to operate with no detectable organic emissions, maintaining equipment integrity, and securing off-site containers engaged in waste and recovery operations. The Illinois Attorney General's Office announced that it was seeking $170 thousand in penalties. The Company's legal and compliance representatives have held discussions with the Illinois Attorney General's Office and the Illinois Environmental Protection Agency, and anticipate that a Supplemental Environmental Project, or SEP, will be negotiated that will substantially reduce the cash component of the penalty in exchange for agreeing to the installation of equipment upgrades at the facility designed to address and control air emissions from operations. These negotiations are ongoing, and although significant progress has been made, there can be no guarantee that a settlement can be reached or that the penalty will be reduced.

Deer Trail Landfill Facility. On March 30, 2004, the State of Colorado Department of Public Health and Environment ("CDPHE") issued a draft Compliance Order on Consent ("COC") and initial penalty calculation to the Company's subsidiary which owns the Deer Trail Landfill Facility (the "Facility"). The COC is based on findings of alleged permit and regulatory violations by the CDPHE during on-site inspections, and the CDPHE has initially calculated a penalty in the amount of $132 thousand. The CDPHE had indicated its desire to settle the matter with the Company. On June 22, 2004, the CDPHE executed the final COC with the Facility that settled the matter. The COC requires the Facility to pay a $26 thousand penalty to the CDPHE and perform three separate Supplemental Environmental Projects ("SEPs"). The first SEP will be a donation of $25 thousand to the Western States Project Training Fund, and the donated funds will be used for training state and local regulatory law enforcement personnel in the area of environmental compliance and enforcement. The second SEP will consist of a donation of cash, services, and/or equipment with a total fair market value of not less than $25 thousand to a combination of a household hazardous waste collection, recycling and disposal event for communities in the vicinity of the Facility. The third SEP involves a donation of cash, services, and/or equipment with a total fair market value of not less than $30 thousand to the local volunteer fire department. The Facility has now paid the $26 thousand penalty to CDPHE and has donated the $25 thousand for the first SEP.

Contingency

Litigation Involving Former Holders of Subordinated Notes . As discussed in the Form 10-K for the year ended December 31, 2004, on April 30, 2001, the Company issued to John Hancock Life Insurance Company, Special Value Bond Fund, LLC, the Bill and Melinda Gates Foundation, and certain other institutional lenders (collectively, the "Lenders") $35 million of 16% Senior Subordinated Notes due 2008 as part of the Company's refinancing of all its then outstanding indebtedness. Under the Securities Purchase Agreement dated as of April 12, 2001, between the Company and the Lenders (the "Purchase Agreement"), the Company was also required to pay a $350 thousand closing fee and issue to the Lenders warrants for an aggregate of 1,519,020 shares of the Company's common stock exercisable at any time prior to April 30, 2008 at an exercise price of $.01 per share. The Purchase Agreement contained covenants limiting (with certain exceptions) the Company's ability to acquire other businesses or incur additional indebtedness without the consent of a majority in interest of the Lenders. The Purchase Agreement also provided that, if the Company should elect to prepay the Subordinated Notes prior to maturity, the Company would be obligated to pay a prepayment penalty which, in the case of a prepayment prior to April 30, 2004, would include a so-called "Make Whole Amount" computed using a discount rate 2.5% above the then current yield on United States government securities of equal maturity to the Subordinated Notes. The Purchase Agreement also provided that, if the Company should default on any of the terms of the Purchase Agreement including the covenants described above, the Lenders would have the right to call the Subordinated Notes for payment at an amount equal to the principal, accrued interest and the so-called "Make Whole Amount" then in effect.

During several months prior to the Company's acquisition of the CSD assets effective September 7, 2002, the Company sought the Lenders' cooperation with respect to such acquisition and to include the Lenders in a refinancing of the Company's outstanding debt (which might involve leaving the Subordinated Notes outstanding or refinancing them). The Lenders, however, ultimately refused to provide any such cooperation. The Company thus notified the Lenders that the Company was proceeding with the acquisition of the CSD assets, which would be a violation of certain covenants in the Purchase Agreement, and the Lenders then called the Subordinated Notes for payment, including principal, interest and the "Make Whole Amount" of $16,991,129, an amount equal to 48.5% of the principal amount of the Subordinated Notes. In response to the Lenders' demand, the Company immediately paid in full the amount demanded, while notifying the Lenders that the Company was paying the "Make Whole Amount" under protest. The Company's position is that if the payment to the Lenders is not deemed to be voluntary and the 48.5% "Make Whole Amount" is deemed unconscionable, the "Make-Whole Amount" is likely to be held unenforceable under Massachusetts case law.

Shortly after the closing of the acquisition of the CSD assets, the Company wrote to the Lenders demanding a return of the prepayment penalty, in response to which, on September 27, 2002, the Lenders filed a complaint in the Norfolk Superior Court

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — CONTINUED

asking the Court to determine the prepayment penalty to be valid and enforceable. On October 1, 2002, the Company filed a complaint in the Business Litigation Session of the Suffolk Superior Court seeking a declaratory judgment that the "Make Whole Amount" is an unenforceable penalty and seeking an order for the return of the amount paid as a penalty, less the Lenders' actual damages (if any), plus interest and costs. In the case of certain of the Lenders, the Company also seeks a judgment that those Lenders' receipt of their share of the "Make Whole Amount," the closing payment and the fair value of the warrants constitutes a violation of applicable Massachusetts usury laws. The Company filed a motion seeking to consolidate both legal proceedings in the Business Litigation Session of the Suffolk Superior Court, which motion was granted. Discovery in the proceedings was completed and all parties served and filed motions for summary judgment. On March 15, 2004, the Court granted summary judgment for the Lenders ruling that the "Make Whole Amount" was enforceable, and on May 15, 2004 the Court ordered that the Company pay $323,345 to the Lenders for legal and expert cost reimbursement. The Company has appealed the Court's rulings. The Company has not accrued the Lenders' legal and expert costs because, based on the advice of legal counsel, the Company now believes that such payment is not probable.

(8) Closure, Post-Closure and Remedial Liabilities

The changes to environmental liabilities for the six months ended June 30, 2004 are as follows (in thousands):

	December 31, 2003	New Asset Retirement Obligations	Accretion	Changes in Estimate Charged to Income Statement	Other Changes in Estimates	Currency Translations, Reclassifications and Other	Payments	June 30, 2004
Landfill retirement liability	$ 17,703	$ 461	$1,266	$ (608)	$ (326)	$ (14)	$ (10)	$ 18,472
Non-landfill retirement liability	7,992	—	470	8	—	(14)	(729)	7,727
Remediation for landfill sites	5,525	—	118	(231)	—	(70)	(258)	5,084
Remediation, closure and post-closure for closed sites	97,535	—	2,155	(507)	—	(10)	(2,732)	96,441
Remediation (including Superfund) for non-landfill open sites	54,376	—	1,198	(106)	—	(352)	(676)	54,440
Total	$ 183,131	$ 461	$ 5,207	$ (1,444)	$ (326)	$ (460)	$ (4,405)	$ 182,164

The following table presents the remaining highly probable airspace from December 31, 2003 through June 30, 2004 (in thousands):

	Highly Probable Airspace (Cubic Yards)
Remaining capacity at December 31, 2003	29,031
Consumed six months ended June 30, 2004	(368)
Addition to highly probable airspace	45
Remaining capacity at June 30, 2004	28,708

Commencing January 1, 2004, asset retirement obligations incurred are being discounted at the credit-adjusted risk-free rate of 12.5% and inflated at a rate of 1.2%.

(9) Redeemable Series C Preferred Stock

As described in the Annual Report on Form 10-K for the year ended December 31, 2003, the Company previously had outstanding the Series C Convertible Preferred Stock, $0.01 par value ("Series C Preferred Stock"). The Series C Preferred Stock was entitled to receive dividends at an annual rate of 6.0% (such dividends were paid in cash through March 2003 and thereafter accrued and compounded through the redemption date). The Company issued the Series C Preferred Stock for $25.0 million on September 10, 2002, and incurred $2.9 million of issuance costs. The Company determined that the Series C Preferred Stock should be recorded on the Company's financial statements as though the Series C Preferred Stock consisted of two components, namely (i) non-convertible redeemable preferred stock (the "Host Contract") with a 6.0% annual dividend, and (ii) an embedded

derivative (the "Embedded Derivative") which reflected the right of the holders of the Series C Preferred Stock to convert into the Company's common stock on the terms set forth in the Series C Preferred Stock. The Series C Preferred Stock reported on the Company's consolidated balance sheet consisted only of the value of the Host Contract (less the issuance costs) plus the amount of accretion in the value of the Host Contract which had been recorded through the balance sheet date with regard to the discount which was originally recorded for the Host Contract, plus the amount of accretion for issuance costs and accrued dividends. Such discount and issuance costs were being accreted over the life of the Series C Preferred Stock, with such accretion being recorded as a reduction in Additional Paid-in-Capital. During the period from January 1 through June 30, 2004, the amount of that accretion was $0.7 million. During the period from January 1 through June 30, 2003, the amount of that accretion was $0.6 million. The Company recorded in Other Long-term Liabilities the fair value of the Embedded Derivative and periodically marked that value to market.

As of June 30, 2003, the market value of the Embedded Derivative was determined to be $8.7 million and the Company recorded $0.4 million and $0.4 million of other income for the three- and six-month periods ended June 30, 2003, respectively, to reflect such adjustment. As of June 30, 2004, the market value of the Embedded Derivative was determined to $11.2 million and the Company recorded expense of $6.9 million and $1.6 million for the three- and six-month periods ended June 30, 2004, respectively, to reflect such adjustment. Because of the redemption of the Series C Preferred Stock on June 30, 2004 described in the following paragraph, the Company will not be required to make mark-to-market adjustments to the Company's reported income (loss) associated with the Embedded Derivative for any period subsequent to June 30, 2004.

On June 30, 2004, the Company redeemed the Series C Preferred Stock for $25.0 million in cash and paid accrued dividends of $2.0 million. The difference between the $25.0 million paid and the carrying amount of the Series C Preferred Stock of $17.2 million on June 30, 2004 was charged to additional paid-in capital. In addition, the Company issued warrants to purchase 2.8 million shares of the Company's common stock, and the Company paid $0.4 million of cash in lieu of warrants for certain other conversion rights of the holders of the Series C Preferred Stock. The warrants issued are exercisable at $8.00 per common share and expire on September 10, 2009. The Company settled the $11.2 million Embedded Derivative liability through the issuance of the 2.8 million warrants (which the Company valued using the Black-Scholes option pricing model at $9.2 million) together with the $0.4 million of cash that was paid in lieu of warrants, which resulted in a gain on the settlement of the Embedded Derivative of $1.6 million. The gain on the settlement of the Embedded Derivative was recorded as a reduction to loss on refinancing. The value of the warrants issued of $9.2 million was credited to additional paid-in capital.

(10) Loss on Refinancing

As further discussed in Notes 4, 6, and 9, the Company previously had outstanding a $100.0 million three-year revolving credit facility (the "Revolving Credit Facility"), $115.0 million of three-year non-amortizing term loans (the "Senior Loans"), $40.0 million of five-year non-amortizing subordinated loans (the "Subordinated Loans"), Series C Convertible Preferred Stock, $0.01 par value (the "Series C Preferred Stock") and the related embedded derivative (the "Embedded Derivative") which reflected the right of the holders of the Series C Preferred Stock to convert into the Company's common stock on the terms set forth in the Series C Preferred Stock. On June 30, 2004, the Company repaid the Revolving Credit Facility, the Senior Loans and the Subordinated Loans, redeemed the Series C Convertible Preferred Stock and settled the related Embedded Derivative liability. The Company recorded loss on refinancing of $7.1 million during the three-month period ended June 30, 2004. Such loss consisted of a write-off of deferred financing costs of $5.3 million, prepayment penalties of $3.1 million, and other expenses of $0.3 million. These expenses were partially offset by the gain on the settlement of the Embedded Derivative of $1.6 million.

(11) Income Taxes

SFAS 109, "Accounting for Income Taxes," requires that a valuation allowance be established when, based on an evaluation of verifiable evidence, there is a likelihood that some portion or all of the deferred tax assets will not be realized. The Company continually reviews the adequacy of the valuation allowance for deferred taxes. For the three and six months ended June 30, 2004, a full valuation allowance was maintained against the Company's net U.S. deferred tax asset position and no U.S. tax benefit was recorded. The effective tax rate of the Company's Canadian subsidiaries was 36.4% and 35.0% for the three-month periods ended June 30, 2004 and 2003, respectively. The effective tax rate of the Canadian subsidiaries for the six-month periods ended June 30, 2004 and 2003 was 37.4% and 36.3%, respectively.

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(12) Loss Per Share

The following is a reconciliation of basic and diluted loss per share computations (in thousands except for per share amounts) for the three- and six-month periods ended June 30, 2004 and 2003:

	Three Months Ended June 30, 2004		
	Income (Numerator)	Shares (Denominator)	Per-Share
Loss before cumulative effect of change in accounting principle	$ (12,127)		
Less redemption of Series C preferred stock and dividends and accretion on preferred stock	10,761		
Basic and diluted loss attributable to common shareholders before change in accounting principle	(22,888)	14,044	$ (1.63)
Cumulative effect of change in accounting principle, net of tax	—	14,044	—
Basic and diluted loss attributable to common shareholders	$ (22,888)	14,044	$ (1.63)

	Three Months Ended June 30, 2003		
	Income (Numerator)	Shares (Denominator)	Per-Share
Loss before cumulative effect of change in accounting principle	$ (6,799)		
Less preferred stock dividends and accretion	814		
Basic and diluted loss attributable to common shareholders before change in accounting principle	(7,613)	13,436	$ (0.57)
Cumulative effect of change in accounting principle, net of tax	—	13,436	—
Basic and diluted loss attributable to common shareholders	$ (7,613)	13,436	$ (0.57)

	Six Months Ended June 30, 2004		
	Income (Numerator)	Shares (Denominator)	Per-Share
Loss before cumulative effect of change in accounting principle	$ (9,310)		
Less redemption of Series C preferred stock and stock dividends and accretion of preferred stock	11,616		
Basic and diluted loss attributable to common shareholders before change in accounting principle	(20,926)	14,002	$ (1.49)
Cumulative effect of change in accounting principle, net of tax	—	14,002	—
Basic and diluted loss attributable to common shareholders	$ (20,926)	14,002	$ (1.49)

	Six Months Ended June 30, 2003		
	Income (Numerator)	Shares (Denominator)	Per-Share
Loss before cumulative effect of change in accounting principle	$ (13,935)		
Less preferred stock dividends and accretion	1,618		
Basic and diluted loss attributable to common shareholders before change in accounting principle	(15,553)	13,353	$ (1.17)
Cumulative effect of change in accounting principle, net of tax	66	13,353	—
Basic and diluted loss attributable to common shareholders	$(15,619)	13,353	$ (1.17)

Because the effects would be anti-dilutive for the periods presented, the above computations of diluted loss per share exclude the assumed conversion of the Series C Convertible Preferred Stock into 2.4 million shares of common stock for the three and six month periods ended June 30, 2003, the assumed exercise of warrants issued in connection with the redemption of the Series C Convertible Preferred Stock into 2.8 million shares of common stock for the

three- and six-month periods ended June 30, 2004, and the assumed exercise of 1.7 million and 1.9 million stock options for the three- and six-month periods ended June 30, 2004 and 2003, respectively.

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(13) Restructuring

For the year ended December 31, 2002, the Company recorded a restructuring charge of $0.8 million related to the acquisition of the assets of the CSD. The restructuring charge consisted of $0.3 million for severance for individuals that were employees of the Company prior to the acquisition, and $0.5 million of costs associated with the decision to close parts of facilities and sales offices that were operated by the Company prior to the acquisition and that became duplicative due to facilities and sales offices acquired as part of the CSD assets. The Company is in the process of completing the restructuring. The following table summarizes the activity from December 31, 2003 through June 30, 2004 (in thousands):

	Locations		
	Number of Locations	Costs	Total
Balance at December 31, 2003	2	$234	$234
Utilized during the six months ended June 30, 2004	(1)	(31)	(31)
Balance at June 30, 2004	1	$203	$203

(14) Segment Reporting

Segment information has been prepared in accordance with SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information." Performance of the segments is evaluated on several factors, of which the primary financial measure is operating income before interest, taxes, depreciation, amortization and restructuring and other acquisition costs ("EBITDA Contribution"). Transactions between the segments are accounted for at the Company's estimate of fair value based on similar transactions with outside customers. In general, SFAS No. 131 requires that business entities report selected information about operating segments in a manner consistent with that used for internal management reporting.

The Company has two reportable segments: Technical Services and Site Services.

Technical Services include:

- treatment and disposal of industrial wastes, which includes physical treatment, resource recovery and fuels blending, incineration, landfills, wastewater treatment, lab chemical disposal and explosives management;
- collection, transportation and logistics management;
- categorization, specialized repackaging, treatment and disposal of laboratory chemicals and household hazardous wastes, which are referred to as CleanPack® services; and
- Apollo Onsite Services, which provides customized environmental programs at customer sites.

These services are provided through a network of service centers where a fleet of trucks, rail or other transport is dispatched to pick up customers' waste either on a pre-determined schedule or on demand, and then to deliver waste to a permitted facility. From the service centers, chemists can also be dispatched to a customer location for the collection of chemical waste for disposal.

Site Services provide highly skilled experts utilizing specialty equipment and resources to perform services, such as industrial maintenance, surface remediation, groundwater restoration, site and facility decontamination, emergency response, site remediation, PCB disposal, oil disposal, analytical testing services, information management services and personnel training. The Company offers outsourcing services for customer environmental management programs as well, and provides analytical testing services, information management and personnel training services.

The Company markets these services through its sales organizations and, in many instances services in one area of the business support or lead to work in other service lines. Expenses associated with the sales organizations are allocated based on external revenues by segment.

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The following table presents information used by management by reported segment. Revenues from Technical and Site Services consist principally of external revenue from customers. Transactions between the segments are accounted for at the Company's estimate of fair value based on similar transactions with outside customers. Corporate Items consist of revenues for miscellaneous services that are not part of a reportable segment. The Company does not consider interest expense, income taxes, depreciation, amortization, accretion of environmental liabilities, restructuring or other acquisition costs when reviewing results of operating segments. Certain reclassifications have been made in the prior period to conform to the presentation for the three- and six-month periods ended June 30, 2004 (in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2004	2003	2004	2003
Revenue:				
Technical Services	$ 114,839	$ 111,138	$216,069	$212,892
Site Services	46,736	60,818	88,101	100,120
Corporate Items	56	79	218	1,328
Total	161,631	172,035	304,388	314,340
Cost of Revenues:				
Technical Services	82,392	78,791	160,314	155,078
Site Services	29,261	46,499	57,831	75,847
Corporate Items	4,189	6,507	5,157	7,486
Total	115,842	131,797	223,302	238,411
Selling, General & Administrative Expenses:				
Technical Services	11,710	15,490	23,096	29,888
Site Services	4,426	4,606	8,599	8,770
Corporate Items	10,288	10,375	18,161	18,768
Total	26,424	30,471	49,856	57,426
EBITDA:				
Technical Services	20,737	16,857	32,659	27,926
Site Services	13,049	9,713	21,671	15,503
Corporate Items	(14,421)	(16,803)	(23,100)	(24,926)
Total	19,365	9,767	31,230	18,503
Reconciliation to Consolidated Statement of Operations:				
Accretion of environmental liabilities	2,619	2,783	5,207	5,516
Depreciation and amortization	6,256	6,439	11,661	13,087
Non-recurring severance	—	265	16	374
Other non-recurring refinancing-related expenses	1,126	—	1,126	—
Restructuring	—	—	—	(124)
Income (loss) from operations	9,364	280	13,220	(350)
Gain (loss) on sale of fixed assets	242	(267)	486	(292)
Change in value of embedded derivative	(6,877)	429	(1,590)	446
Loss on refinancing	(7,099)	—	(7,099)	—
Interest (expense), net	(5,443)	(5,979)	(10,801)	(11,489)
Loss before provision for income taxes and cumulative effect of change in accounting principle	$ (9,813)	$ (5,537)	$ (5,784)	$ (11,685)

CLEAN HARBORS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — CONTINUED

(15) Guarantor and Non-Guarantor Subsidiaries

As further described in Note 6, the Senior Secured Notes were issued by the parent company, Clean Harbors, Inc., and guaranteed by all of the parent's material subsidiaries organized in the United States. The Notes are not guaranteed by the Company's Canadian and Mexican subsidiaries. The following presents condensed consolidating financial statements for the parent company, the guarantor subsidiaries and the non-guarantor subsidiaries, respectively.

In addition, as part of the refinancing of the Company's debt, one of the parent's Canadian subsidiaries made a $91.7 million (U.S.) investment in the preferred stock of one of the parent's domestic subsidiaries and issued, in partial payment for such investment, a promissory note for $89.4 million (U.S.) payable to one of the parent's domestic subsidiaries. The dividend rate on such preferred stock is 11.125% per annum and the interest rate on such promissory note is 11.0% per annum. The effect of this transaction is to increase stockholders' equity of a U.S. guarantor subsidiary, to increase interest income of a U.S. guarantor subsidiary, to increase debt of a foreign non-guarantor subsidiary, and to increase interest expense of a foreign non-guarantor subsidiary.

Following is the condensed consolidating balance sheet at June 30, 2004 (in thousands):

	Clean Harbors, Inc.	U.S. Guarantor Subsidiaries	Domestic Non-Guarantor Subsidiary	Foreign Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Assets:						
Cash and cash equivalents	$ —	$ 12,617	$ —	$ 4,772	$ —	$ 17,389
Restricted cash	3,913	—	—	—	—	3,913
Accounts receivable, net	200	97,338	—	15,802	—	113,340
Unbilled accounts receivable	—	4,803	—	3,448	—	8,251
Intercompany receivables	26,833	—	7	2,780	(29,620)	—
Deferred costs	—	4,639	—	786	—	5,425
Prepaid expenses	2,317	7,216	—	507	—	10,040
Supplies inventories	—	9,261	—	513	—	9,774
Properties held for sale	—	12,285	—	—	—	12,285
Property, plant and equipment, net	—	153,618	—	17,080	—	170,698
Deferred financing costs	9,540	—	—	16	—	9,556
Goodwill, net	—	19,032	—	—	—	19,032
Permits and other intangibles, net	—	56,955	—	19,773	—	76,728
Investments in subsidiaries	106,816	32,367	—	91,654	(230,837)	—
Deferred tax asset	—	—	—	6,527	—	6,527
Intercompany note receivable	—	89,418	—	3,701	(93,119)	—
Other assets	—	6,082	—	2,001	—	8,083
Total assets	$149,619	$505,631	$ 7	$ 169,360	$(353,576)	$ 471,041
Liabilities and Stockholders' Equity (Deficit):						
Uncashed checks	$ —	$ 3,580	$ —	$ 1,225	$ —	$ 4,805
Accounts payable	—	47,946	—	11,152	—	59,098
Accrued disposal costs	—	1,953	—	513	—	2,466
Deferred revenue	—	19,328	—	4,051	—	23,379
Other accrued expenses	903	31,036	—	2,924	—	34,863
Income taxes payable	—	576	—	4,474	—	5,050
Intercompany payable	—	29,620	—	—	(29,620)	—
Environmental liabilities	—	168,710	—	13,454	—	182,164
Long-term obligations	148,045	—	—	—	—	148,045
Capital lease obligations	—	4,701	—	638	—	5,339
Other long-term liabilities	—	—	—	8,253	—	8,253
Intercompany note payable	3,701	—	—	89,418	(93,119)	—
Accrued pension cost	—	—	—	609	—	609
Total liabilities	152,649	307,450	—	136,711	(122,739)	474,071
Stockholders' equity (deficit):						
Series B convertible preferred stock	1	—	—	—	—	1
Common stock	141	—	—	2,236	(2,236)	141
Additional paid-in capital	61,843	212,198	—	4,049	(216,247)	61,843
Accumulated other comprehensive income	5,216	—	—	5,216	(5,216)	5,216
Retained earnings (deficit)	(70,231)	(14,017)	7	21,148	(7,138)	(70,231)

Total stockholders' equity (deficit)	(3,030)	198,181	7	32,649	(230,837)	(3,030)
Total liabilities and stockholders' equity (deficit)	$149,619	$505,631	$ 7	$ 169,360	$(353,576)	$ 471,041

CLEAN HARBORS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — CONTINUED

Following is the condensed consolidating balance sheet at December 31, 2003 (in thousands):

	Clean Harbors, Inc.	U.S. Guarantor Subsidiaries	Domestic Non-Guarantor Subsidiary	Foreign Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Assets:						
Cash and cash equivalents	$ —	$ 5,313	$ 14	$ 1,004	$ —	$ 6,331
Accounts receivable, net	—	97,255	—	17,174	—	114,429
Unbilled accounts receivable	—	7,030	—	2,446	—	9,476
Intercompany receivables	2,056	—	305	213	(2,574)	—
Deferred costs	—	4,587	—	808	—	5,395
Prepaid expenses	1,597	6,699	—	286	—	8,582
Supplies inventories	—	8,522	—	496	—	9,018
Properties held for sale	—	12,690	—	—	—	12,690
Property, plant and equipment, net	—	150,755	—	15,787	—	166,542
Restricted cash and cash equivalents	88,817	—	—	—	—	88,817
Deferred financing costs	6,277	—	—	20	—	6,297
Goodwill, net	—	19,032	—	—	—	19,032
Permits and other intangibles, net	—	58,840	—	20,971	—	79,811
Investments in subsidiaries	118,384	—	—	—	(118,384)	—
Intercompany note receivable	—	—	—	24,209	(24,209)	—
Deferred tax asset	—	—	—	6,772	—	6,772
Other assets	—	5,045	—	1,922	—	6,967
Total assets	$ 217,131	$ 375,768	$ 319	$ 92,108	$(145,167)	$ 540,159
Liabilities, Redeemable Convertible Preferred Stock and Stockholders' Equity:						
Uncashed checks	$ —	$ 5,139	$ —	$ 844	$ —	$ 5,983
Revolving credit facility	33,493	—	—	1,798	—	35,291
Accounts payable	—	50,813	—	9,798	—	60,611
Accrued disposal costs	—	1,492	—	529	—	2,021
Deferred revenue	—	18,644	—	4,155	—	22,799
Other accrued expenses	1,710	27,633	17	2,880	—	32,240
Income taxes payable	203	221	—	2,199	—	2,623
Intercompany payables	—	2,574	—	—	(2,574)	—
Environmental liabilities	—	169,191	—	13,940	—	183,131
Long-term obligations	147,209	—	—	—	—	147,209
Capital lease obligations	—	4,167	—	452	—	4,619
Other long-term liabilities	9,572	—	—	8,483	—	18,055
Intercompany note payable	—	24,209	—	—	(24,209)	—
Accrued pension cost	—	—	—	633	—	633
Total liabilities	192,187	304,083	17	45,711	(26,783)	515,215
Redeemable Series C Convertible Preferred Stock	15,631	—	—	—	—	15,631
Stockholders' equity:						
Series B convertible preferred stock	1	—	—	—	—	1
Common stock	139	—	300	—	(300)	139
Additional paid-in capital	63,642	90,413	—	24,987	(115,400)	63,642
Accumulated other comprehensive income	6,452	—	—	6,452	(6,452)	6,452
Retained earnings (deficit)	(60,921)	(18,728)	2	14,958	3,768	(60,921)
Total stockholders' equity	9,313	71,685	302	46,397	(118,384)	9,313
Total liabilities, redeemable convertible preferred stock and stockholders' equity	$ 217,131	$ 375,768	$ 319	$ 92,108	$(145,167)	$ 540,159

CLEAN HARBORS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — CONTINUED

Following is the consolidating statement of operations for the three months ended June 30, 2004 (in thousands):

	Clean Harbors, Inc.	U.S. Guarantor Subsidiaries	Domestic Non-Guarantor Subsidiary	Foreign Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Revenues	$ —	$ 130,271	$ 61	$35,911	$ (4,612)	$161,631
Cost of revenues	—	96,347	8	24,049	(4,562)	115,842
Selling, general and administrative expenses	—	22,859	43	4,698	(50)	27,550
Accretion of environmental liabilities	—	2,453	—	166	—	2,619
Depreciation and amortization	—	5,576	—	680	—	6,256
Income from operations	—	3,036	10	6,318	—	9,364
Other income (expense)	(6,877)	242	—	—	—	(6,635)
Equity in earnings of subsidiaries	8,474	—	—	—	(8,474)	—
Loss on refinancing	(7,099)	—	—	—	—	(7,099)
Interest income (expense), net	(6,623)	1,281	—	(101)	—	(5,443)
Income (loss) before provision for income taxes	(12,125)	4,559	10	6,217	(8,474)	(9,813)
Provision for income taxes	2	71	1	2,240	—	2,314
Net income (loss)	$ (12,127)	$ 4,488	$ 9	$ 3,977	$ (8,474)	$ (12,127)

Following is the consolidating statement of operations for the three months ended June 30, 2003 (in thousands):

	Clean Harbors, Inc.	U.S. Guarantor Subsidiaries	Domestic Non-Guarantor Subsidiary	Foreign Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Revenues	$ —	$ 145,475	$ 13	$29,759	$ (3,212)	$ 172,035
Cost of revenues	—	115,828	3	19,168	(3,202)	131,797
Selling, general and administrative expenses	—	24,458	12	6,276	(10)	30,736
Accretion of environmental liabilities	—	2,673	—	110	—	2,783
Depreciation and amortization	—	5,549	—	890	—	6,439
Income (loss) from operations	—	(3,033)	(2)	3,315	—	280
Other income (expense)	429	(267)	—	—	—	162
Equity (loss) in earnings of subsidiaries	(1,382)	—	—	—	1,382	—
Interest (expense), net	(5,846)	(94)	—	(39)	—	(5,979)
Income (loss) before provision for income taxes	(6,799)	(3,394)	(2)	3,276	1,382	(5,537)
Provision for (benefit from) income taxes	—	86	(1)	1,177	—	1,262
Net income (loss)	$ (6,799)	$ (3,480)	$ (1)	$ 2,099	$ 1,382	$ (6,799)

Following is the consolidating statement of operations for the six months ended June 30, 2004 (in thousands):

	Clean Harbors, Inc.	U.S. Guarantor Subsidiaries	Domestic Non-Guarantor Subsidiary	Foreign Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Revenues	$ —	$ 251,542	$ 61	$60,221	$ (7,436)	$ 304,388
Cost of revenues	—	191,441	12	39,235	(7,386)	223,302
Selling, general and administrative expenses	—	41,543	43	9,462	(50)	50,998
Accretion of environmental liabilities	—	4,870	—	337	—	5,207
Depreciation and amortization	—	10,340	—	1,321	—	11,661
Income from operations	—	3,348	6	9,866	—	13,220
Other income (expense)	(1,590)	486	—	—	—	(1,104)

Equity in earnings of subsidiaries	10,906	—	—	—	(10,906)	—
Loss on refinancing	(7,099)	—	—	—	—	(7,099)
Interest income (expense), net	(11,646)	1,024	—	(179)	—	(10,801)
Income (loss) before provision for income taxes	(9,429)	4,858	6	9,687	(10,906)	(5,784)
Provision for (benefit from) income taxes	(119)	147	1	3,497	—	3,526
Net income (loss)	$ (9,310)	$ 4,711	$ 5	$ 6,190	$ (10,906)	$ (9,310)

CLEAN HARBORS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — CONTINUED

Following is the consolidating statement of operations for the six months ended June 30, 2003 (in thousands):

	Clean Harbors, Inc.	U.S. Guarantor Subsidiaries	Domestic Non-Guarantor Subsidiary	Foreign Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Revenues	$ —	$265,226	$ 25	$55,908	$ (6,819)	$ 314,340
Cost of revenues	—	208,575	4	36,630	(6,798)	238,411
Selling, general and administrative expenses	7	46,372	26	11,416	(21)	57,800
Accretion of environmental liabilities	—	5,306	—	210	—	5,516
Depreciation and amortization	—	11,056	—	2,031	—	13,087
Restructuring	—	(124)	—	—	—	(124)
Income (loss) from operations	(7)	(5,959)	(5)	5,621	—	(350)
Other income (expense)	446	(292)	—	—	—	154
Equity (loss) in earnings of subsidiaries	(3,216)	—	—	—	3,216	—
Interest (expense), net	(11,222)	(231)	—	(36)	—	(11,489)
Income (loss) before provision for income taxes and cumulative effect of change in accounting principle	(13,999)	(6,482)	(5)	5,585	3,216	(11,685)
Provision for (benefit from) income taxes	2	185	(2)	2,065	—	2,250
Net income (loss) before cumulative effect of change in accounting principle, net of tax	(14,001)	(6,667)	(3)	3,520	3,216	(13,935)
Cumulative effect of change in accounting principle, net of tax	—	169	—	(103)	—	66
Net income (loss)	$ (14,001)	$ (6,836)	$ (3)	$ 3,623	$ 3,216	$ (14,001)

Following is the condensed consolidating statement of cash flows for the six months ended June 30, 2004 (in thousands):

	Clean Harbors, Inc.	U.S. Guarantor Subsidiaries	Domestic Non-Guarantor Subsidiary	Foreign Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Net cash (used in) provided by operating activities	$ (834)	$ 19,547	$ (14)	$ 7,237	$ (10,906)	$ 15,030
Cash flows from investing activities:						
Additions to property, plant and equipment	—	(10,719)	—	(2,168)	—	(12,887)
Proceeds from sale of restricted investments	89,294		—	—	—	89,294
Cost of restricted investments purchased	(4,390)	—	—	—	—	(4,390)
Investment in subsidiaries	(10,906)	—	—	—	10,906	—
Proceeds from sale of fixed assets	—	665	—	—	—	665
Net cash (used in) provided by investing activities	73,998	(10,054)	—	(2,168)	10,906	72,682
Cash flows from financing activities:						
Repayments on Senior Loans	(107,209)	—	—	—	—	(107,209)
Repayments of Subordinated Loans	(40,000)	—	—	—	—	(40,000)
Net repayments under revolving credit facility	(33,492)	—	—	(1,676)	—	(35,168)
Change in uncashed checks	—	(1,556)	—	452	—	(1,104)
Deferred financing costs incurred	(10,164)	—	—	—	—	(10,164)
Proceeds from exercise of stock options	155	—	—	—	—	155
Dividend payments on preferred stock	(1,963)	—	—	—	—	(1,963)
Proceeds from employee stock purchase						

plan	247	—	—	—	—	247
Payments on capital leases	—	(633)		(97)	—	(730)
Issuance of Senior Secured Notes	148,045	—	—	—	—	148,045
Redemption of Series C Convertible Preferred Stock	(25,000)	—	—	—	—	(25,000)
Cash paid in lieu of warrants	(363)	—	—	—	—	(363)
Debt extinguishment payments	(3,420)	—	—	—	—	(3,420)
Net cash used in financing activities	(73,164)	(2,189)	—	(1,321)	—	(76,674)
Increase (decrease) in cash and cash equivalents	—	7,304	(14)	3,748	—	11,038
Effect of exchange rate change on cash	—	—	—	20	—	20
Cash and cash equivalents, beginning of period	—	5,313	14	1,004	—	6,331
Cash and cash equivalents, end of period	$ —	$ 12,617	$ —	$ 4,772	$ —	$ 17,389

CLEAN HARBORS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — CONTINUED

Following is the condensed consolidating statement of cash flows for the six months ended June 30, 2003 (in thousands):

	Clean Harbors, Inc.	U.S. Guarantor Subsidiaries	Domestic Non-Guarantor Subsidiary	Foreign Non-Guarantor Subsidiaries	Consolidating Adjustments	Total
Net cash (used in) provided by operating activities	$ (1,085)	$ 13,792	$ (8)	$ (4,811)	$ 3,216	$ 11,104
Cash flows from investing activities:						
CSD acquisition costs	—	(250)	—	—	—	(250)
Additions to property, plant and equipment	—	(17,223)	—	(1,212)	—	(18,435)
Cost of restricted investments purchased	(23,410)	—	—	—	—	(23,410)
Investment in subsidiaries	3,216	—	—	—	(3,216)	—
Proceeds from sale of fixed assets	—	241	—	—	—	241
Net cash used in investing activities	(20,194)	(17,232)	—	(1,212)	(3,216)	(41,854)
Cash flows from financing activities:						
Repayments on Senior Loans	(351)	—	—	—	—	(351)
Net borrowings (repayments) under revolving credit facility	22,543	—	—	(84)		22,459
Change in uncashed checks	—	890	—	—	—	890
Deferred financing costs incurred	(562)	—	—	—	—	(562)
Proceeds from exercise of stock options	367	—	—	—	—	367
Dividend payments on preferred stock	(974)	—	—	—	—	(974)
Proceeds from employee stock purchase plan	256	—	—	—	—	256
Payments on capital leases	—	(244)	—	(1)	—	(245)
Net cash provided by (used in) financing activities	21,279	646	—	(85)	—	21,840
Decrease in cash and cash equivalents	—	(2,794)	(8)	(6,108)	—	(8,910)
Effect of exchange rate change on cash	—	—	—	633	—	633
Cash and cash equivalents, beginning of period	—	7,231	22	6,429	—	13,682
Cash and cash equivalents, end of period	$ —	$ 4,437	$ 14	$ 954	$ —	$ 5,405

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Forward-Looking Statements

In addition to historical information, this Quarterly Report contains forward-looking statements, which are generally identifiable by use of the words "believes," "expects," "intends," "anticipates," "plans to," "estimates," "projects," or similar expressions. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those reflected in these forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed in the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Factors That May Affect Future Results." Readers are cautioned not to place undue reliance on these forward-looking statements, which reflect management's opinions only as of the date hereof. The Company undertakes no obligation to revise or publicly release the results of any revision to these forward-looking statements. Readers should carefully review the risk factors described in the Company's Form 10-K filed with the Securities and Exchange Commission on March 15, 2004 and in other documents the Company files from time to time with the Securities and Exchange Commission.

Overview

The Company provides a wide range of environmental services and solutions to a diversified customer base in the United States, Puerto Rico, Mexico and Canada. The Company seeks to be recognized by customers as the premier supplier of a broad range of value-added environmental services based upon quality, responsiveness, customer service, information technologies, breadth of product offerings and cost effectiveness.

Effective September 7, 2002, the Company purchased from Safety-Kleen Services, Inc. (the "Seller") and certain of the Seller's domestic subsidiaries substantially all of the assets of the Chemical Services Division (the "CSD") of Safety-Kleen Corp. ("Safety-Kleen"). That acquisition broadened the Company's disposal capabilities, geographic reach and significantly expanded the Company's network of hazardous waste disposal facilities. Following the acquisition, the Company became one of the largest providers of environmental services and the largest operator of hazardous waste treatment and disposal facilities in North America. The Company believes that the acquisition of hazardous waste facilities in new geographic areas will allow the Company to expand its service area and will continue to result in significant cost savings by allowing the Company to treat and dispose of hazardous waste internally that the Company previously paid third parties for and to eliminate redundant selling, general and administrative expenses and inefficient transportation costs.

The Company believes that significant synergies can be achieved by further integrating the former CSD operations into its business. Since the effective date of the acquisition, the Company has reduced and plans to continue to reduce expenses by use of common information management systems to minimize disposal costs outside the integrated network of facilities by sending waste to the disposal facilities that it now owns. The Company also has eliminated and plans to continue to eliminate duplicate costs relating to overlapping operations on a geographic basis. Although much of the integration of operations and reduction of the combined entities' overlapping costs has been completed, this process is still ongoing.

In addition, as part of the acquisition, the Company assumed certain environmental liabilities valued at $184.5 million. The Company now anticipates such liabilities will be payable over many years and that cash flows generated from operations will be sufficient to fund the payment of such liabilities when required. However, events not now anticipated (such as future changes in environmental laws and regulations) could require that such payments be made earlier or in greater amounts than now anticipated.

As further discussed in Item 4, "Controls and Procedures," Safety-Kleen has publicly disclosed that it had material deficiencies in many of its financial systems, processes and related internal controls. Due to the deficiencies in these systems and the Company's belief that it will be able to utilize its own systems in order to improve the operations of the former CSD, the decision was made to integrate the U.S. operations of the former CSD into the Company's business and financial reporting systems effective as of the acquisition date. Due to the acquisition of the CSD, the Company continues to experience deficiencies in certain of its internal controls. The Company has made significant progress in resolving the internal control weaknesses caused by the integration of the CSD into its systems, and the Company has on-going efforts to strengthen its internal controls.

Acquisition

In accordance with the Acquisition Agreement between the Seller and the Company dated February 22, 2002, as amended through September 6, 2002, the Company purchased the assets of the CSD for $26.6 million in net cash, and incurred direct costs related to the transaction of $9.7 million for a total purchase price of $36.3 million. In addition, the Company assumed with the transaction certain environmental liabilities valued at $184.5 million.

In connection with the acquisition of the CSD assets, the Company recorded integration liabilities of $12.6 million (after giving effect to subsequent net changes in estimates) which consisted primarily of lease costs, severance, environmental closure and other exit costs to close duplicative facilities and functions. Groups of employees severed and to be severed consist primarily of duplicative selling, general and administrative personnel and personnel at offices which were closed. The following table summarizes the activity of the purchase accounting liabilities recorded in connection with the acquisition of the CSD assets (dollars in thousands):

	Severance		Facilities		
	Number of Employees	Liability	Number of Facilities	Liability	Total
Balance at December 31, 2003	52	$ 676	9	$ 2,931	$ 3,607
Net change in estimate	(10)	—	—	65	65
Utilized in the quarter ended March 31, 2004	(3)	(184)	—	(499)	(683)
Utilized in the quarter ended June 30, 2004	(15)	(154)	—	(111)	(265)
Interest accretion	—	—	—	136	136
Balance at June 30, 2004	24	$ 338	9	$2,522	$2,860

Environmental Liabilities

The changes to environmental liabilities for the six months ended June 30, 2004 are as follows (dollars in thousands):

	December 31, 2003	New Asset Retirement Obligations	Accretion	Changes in Estimate Charged to Income Statement	Other Changes in Estimates	Currency Translations, Reclassifications and Other	Payments	June 30, 2004
Landfill retirement liability	$ 17,703	$ 461	$1,266	$ (608)	$ (326)	$ (14)	$ (10)	$ 18,472
Non-landfill retirement liability	7,992	—	470	8	—	(14)	(729)	7,727
Remediation for landfill sites	5,525	—	118	(231)	—	(70)	(258)	5,084
Remediation, closure and post-closure for closed sites	97,535	—	2,155	(507)	—	(10)	(2,732)	96,441
Remediation (including Superfund) for non-landfill open sites	54,376	—	1,198	(106)	—	(352)	(676)	54,440
Total	$ 183,131	$ 461	$ 5,207	$ (1,444)	$ (326)	$ (460)	$ (4,405)	$ 182,164

The following table presents the remaining highly probable airspace from December 31, 2003 through June 30, 2004 (in thousands):

	Highly Probable Airspace (Cubic Yards)
Remaining capacity at December 31, 2003	29,031
Consumed six months ended June 30, 2004	(368)
Addition to highly probable airspace	45
Remaining capacity at June 30, 2004	28,708

Commencing January 1, 2004, asset retirement obligations incurred are being discounted at the credit-adjusted risk-free rate of 12.5% and inflated at a rate of 1.2%.

Results of Operations

The Company's operations are managed as two segments: Technical Services and Site Services. Technical Services include treatment and disposal of industrial wastes via incineration, landfill or wastewater treatment, collection and transporting of containerized and bulk waste, categorization, specialized repackaging, treatment and disposal of laboratory chemicals and household hazardous wastes, which are referred to as CleanPack ® services, and the Apollo Onsite Service, which customizes

environmental programs at customer sites. This is accomplished through a network of service centers where a fleet of trucks, rail or other transport is dispatched to pick up customers' waste either on a pre-determined schedule or on demand, and then to deliver waste to a permitted facility. From the service centers, chemists can also be dispatched to a customer location for the collection of chemical waste for disposal. Site Services provide highly skilled experts utilizing specialty equipment and resources to perform services, such as site decontamination, remediation projects, selective demolition, emergency response, spill cleanup and vacuum services at the customer's site or another location. These services are dispatched on a scheduled or emergency basis. The Company also offers outsourcing services for customer environmental management programs, and provides analytical testing services, information management and personnel training services.

The following table sets forth for the periods indicated certain operating data associated with the Company's results of operations. This table and subsequent discussions should be read in conjunction with Item 6, "Selected Financial Data," and Item 8, "Financial Statements and Supplementary Data" of the Annual Report on Form 10-K for the year ended December 31, 2003 and Item 1, "Financial Statements" in this report.

	Percentage of Total Revenues			
	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2004	2003	2004	2003
Revenues	100.0%	100.0%	100.0%	100.0%
Cost of revenues:				
Disposal costs to third parties	3.3	5.0	3.9	4.9
Other cost of revenues	68.4	71.6	69.5	71.0
Total cost of revenues	71.7	76.6	73.4	75.9
Selling, general and administrative expenses	17.0	17.9	16.8	18.4
Accretion of environmental liabilities	1.6	1.6	1.7	1.7
Depreciation and amortization	3.9	3.8	3.8	4.1
Restructuring	0.0	0.0	0.0	0.0
Income (loss) from operations	5.8	0.1	4.3	(0.1)
Other income (expense)	(4.1)	0.1	(0.4)	0.0
Loss on refinancing	(4.4)	0.0	(2.3)	0.0
Interest (expense), net	(3.4)	(3.5)	(3.5)	(3.7)
Loss before provision for income taxes and cumulative effect of change in accounting principle	(6.1)	(3.3)	(1.9)	(3.8)
Provision for income taxes	1.4	0.7	1.2	0.7
Net loss before cumulative effect of change in accounting principle	(7.5)	(4.0)	(3.1)	(4.5)
Cumulative effect of change in accounting principle, net of tax	0.0	0.0	0.0	0.0
Net loss	(7.5)%	(4.0)%	(3.1)%	(4.5)%

Earnings before Interest, Taxes, Depreciation and Amortization ("EBITDA")

The Company defines EBITDA as net income or loss, excluding interest, taxes, depreciation and amortization, accretion of environmental liabilities, restructuring charges, effects of discontinued operations, other non-recurring costs, and certain extraordinary or non-recurring gains or losses. The Company's management considers EBITDA to be a measurement of performance which provides useful information to both management and investors.

EBITDA should not be considered an alternative to net income or loss or other measurements under accounting principles generally accepted in the United States as an indicator of operating performance or to cash flows from operating, investing, or financing activities as a measure of liquidity. EBITDA does not reflect working capital changes, cash expenditures for interest, taxes, capital improvements or principal payments on indebtedness. Furthermore, the Company's measurement of EBITDA might be inconsistent with similar measures presented by other companies.

EBITDA for the three months ended June 30, 2004 is calculated as follows (in thousands):

	Three Months Ended June 30, 2004
Net loss	$ (12,127)
Gain on sale of fixed assets	(242)
Change in value of embedded derivative	6,877
Loss on refinancing	7,099
Accretion of environmental liabilities	2,619
Interest expense, net	5,443
Provision for income taxes	2,314
Depreciation and amortization	6,256
Other non-recurring refinancing-related expense	1,126
EBITDA	$ 19,365

The following reconciles EBITDA to cash provided by operations for the three-month period ended June 30, 2004 (in thousands):

	Three Months Ended June 30, 2004
EBITDA	$ 19,365
Adjustments to reconcile EBITDA from net cash provided by operations:	
Interest expense, net	(5,443)
Provision for income taxes	(2,314)
Allowance for doubtful accounts	334
Amortization of deferred financing costs	805
Foreign currency gain on intercompany transactions	(546)
Other non-recurring refinancing related expenses	(1,126)
Changes in assets and liabilities:	
Accounts receivable	(4,272)
Unbilled accounts receivable	(2,217)
Prepaid expenses	1,317
Other assets	(1,435)
Accounts payable	4,105
Environmental liabilities	(2,678)
Other accrued expenses	2,776
Income tax payable	742
Other, net	(472)
Net cash provided by operating activities	$ 8,941

Segment data

Performance of the Company's segments is evaluated on several factors of which the primary financial measure is EBITDA. The following table sets forth certain operating data associated with the Company's results of operations and summarizes EBITDA contribution by operating segment for the three- and six-month periods ended June 30, 2004 and 2003. The Company considers EBITDA contribution from each operating segment to include revenue attributable to each segment less operating expenses, which include cost of revenues and selling, general and administrative expenses. Revenue attributable to each segment is generally external or direct revenue from third party customers. Certain income or expenses of a non-recurring or unusual nature are not included in the operating segment EBITDA contribution. This table and subsequent discussions should be read in conjunction with Item 6, "Selected Financial Data," and Item 8, "Financial Statements and Supplementary Data" and in

particular Note 20, “Segment Reporting” of the Annual Report on Form 10-K for the year ended December 31, 2003 and Item 1, “Financial Statements” and in particular Note 14, “Segment Reporting” in this report (in thousands).

	Summary of Operations			
	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2004	2003	2004	2003
Revenue:				
Technical Services	$ 114,839	$ 111,138	$216,069	$212,892
Site Services	46,736	60,818	88,101	100,120
Corporate Items	56	79	218	1,328
Total	161,631	172,035	304,388	314,340
Cost of Revenues:				
Technical Services	82,392	78,791	160,314	155,078
Site Services	29,261	46,499	57,831	75,847
Corporate Items	4,189	6,507	5,157	7,486
Total	115,842	131,797	223,302	238,411
Selling, General & Administrative Expenses:				
Technical Services	11,710	15,490	23,096	29,888
Site Services	4,426	4,606	8,599	8,770
Corporate Items	10,288	10,375	18,161	18,768
Total	26,424	30,471	49,856	57,426
EBITDA:				
Technical Services	20,737	16,857	32,659	27,926
Site Services	13,049	9,713	21,671	15,503
Corporate Items	(14,421)	(16,803)	(23,100)	(24,926)
Total	$ 19,365	$ 9,767	$ 31,230	$ 18,503

Three months ended June 30, 2004 versus the three months ended June 30, 2003

Revenues

Total revenues for the three months ended June 30, 2004 decreased $10.4 million to $161.6 million from $172.0 million for the comparable period in 2003. Technical Services revenues for the three months ended June 30, 2004 increased $3.7 million to $114.8 million from $111.1 million for the comparable period in 2003. Site Services revenues for the three months ended June 30, 2004 decreased $14.1 million to $46.7 million from $60.8 million for the comparable period in 2003. Increases in Technical Services revenues resulted from a stronger economy and improved disposal volumes in the Company’s landfill and incineration assets. Site Services performed one large emergency response job during the three months ended June 30, 2003 which accounted for 28.3% of its revenue for that period. There was no major event in the same period of the 2004. Excluding this one large job, revenue increased $3.2 million, or 7.3%, for the three months ended June 30, 2004 compared to the three months ended June 30, 2003 because of an improved economy and growth initiatives in the western United States and Canadian regions.

There are many factors which have impacted, and continue to impact, the Company’s revenues. These factors include: economic conditions; integration of operations of the former CSD; competitive industry pricing; continued efforts by generators of hazardous waste to reduce the amount of hazardous waste they produce; significant consolidation among treatment and disposal companies; industry-wide overcapacity; and direct shipment by generators of waste to the ultimate treatment or disposal location.

Cost of Revenues

Total cost of revenues for the three months ended June 30, 2004 decreased $16.0 million to $115.8 million compared to $131.8 million for the comparable period in 2003. Technical Services cost of revenue increased $3.6 million to $82.4 million from $78.8 million for the comparable period in 2003. Site Services cost of revenue decreased $17.2 million to $29.3 million from $46.5 million for the comparable period in 2003. The increase in cost of revenues for Technical Services was largely a result of increases in energy costs, higher volumes, and greater usage of outside transportation vendors on certain facility projects. The decrease in cost of revenues for Site Services was attributable to the lack of costs related to a major emergency response in comparison to the three months ended June 30, 2003. As a percentage of revenues, combined cost of revenues in the second quarter of 2004 decreased 4.9% to 71.7% from 76.6% for comparable period in 2003. This reduction resulted from a 1.7% of revenue improvement in disposal costs paid to third parties, reduced headcount expense, and improved absorption of fixed costs as a result of higher volumes in the Company's incineration and landfill assets.

The Company believes that its ability to manage operating costs is an important factor in its ability to remain price competitive. The Company continues to upgrade the quality and efficiency of its waste treatment services through the development of new technology, continued modifications and upgrades at its facilities, and implementation of strategic sourcing initiatives. The Company plans to continue to focus on achieving cost savings relating to purchased goods and services through the strategic sourcing initiative. No assurance can be given that the Company's efforts to manage future operating expenses will be successful.

Selling, General and Administrative Expenses

Total selling, general and administrative expenses for the three months ended June 30, 2004 decreased $4.1 million to $26.4 million from $30.5 million for the comparable period in 2003. The decrease was primarily due to reductions in headcount primarily in the third and fourth quarters of 2003 and decreased foreign exchange transaction losses. Technical Services selling, general and administrative expenses for the three months ended June 30, 2004 decreased $3.8 million to $11.7 million from $15.5 million for the comparable period in 2003 due to reduced headcount expenses and decreased foreign exchange transaction losses. Site Services and Corporate Items selling, general and administrative expenses were slightly less for the three months ended June 30, 2004 compared to the same period of the prior year as a result of reduced professional fees and lower headcount expenses. These improvements in expense management were somewhat offset by higher bonus accruals, expenses associated with the refinancing, and expenses incurred on technology improvements and telecommunications.

Accretion of Environmental Liabilities

Accretion of environmental liabilities for the three-month periods ended June 30, 2004 and 2003 was similar at $2.6 million and $2.8 million, respectively.

Depreciation and Amortization

Depreciation and amortization expense of $6.3 million for the three months ended June 30, 2004 remained relatively constant to $6.4 million for the comparable period in 2003.

Other Income (Expense)

As more fully described in Note 9 to the financial statements in this report, the Company issued Series C Preferred Stock for $25.0 million in September 2002. The Series C Preferred Stock was recorded on the Company's financial statements as though it consisted of two components, namely (i) non-convertible redeemable preferred stock with a 6.0% annual dividend, and (ii) an embedded derivative (the "Embedded Derivative") which reflected the right of the holders of the Series C Preferred Stock to convert the Series C Preferred Stock into the Company's common stock. On June 30, 2004, the Company redeemed the Series C Preferred Stock and settled the Embedded Derivative liability. Just prior to the settlement, the Company valued the Embedded Derivative using the Black-Scholes option pricing model. The Black-Scholes model determines the value of an option primarily by considering the strike price of the option, the market value of the stock and the volatility of the stock price. The strike price of the Embedded Derivative was $8.00. For the quarter ended June 30, 2004, the Company recorded other expense related to the Embedded Derivative of $6.9 million primarily because of the market price increase of the Company's common stock that occurred during that quarter. For the quarter ended June 30, 2003, the Company recorded other income related to the Embedded Derivative of $0.4 million. The settlement of the Embedded Derivative liability on June 30, 2004 will result in no additional other income (expense) being recorded in future periods related to the Embedded Derivative. Partially offsetting the expense on the Embedded Derivative during the quarters ended June 30, 2004 and 2003 was respectively a net gain (loss) on the disposal of fixed assets of $0.2 million and $(0.2) million.

Loss on Refinancing

As further discussed in Notes 4, 6, and 9 to the financial statements included in this report, the Company previously had outstanding a $100.0 million three-year revolving credit facility (the "Revolving Credit Facility"), $115.0 million of three-year non-amortizing term loans (the "Senior Loans"), $40.0 million of five-year non-amortizing subordinated loans (the "Subordinated Loans"), Series C Convertible Preferred Stock, $0.01 par value (the "Series C Preferred Stock") and the related embedded derivative (the "Embedded Derivative") which reflected the right of the holders of the Series C Preferred Stock to convert into the Company's common stock on the terms set forth in the Series C Preferred Stock. On June 30, 2004, the Company repaid the Revolving Credit Facility, the Senior Loans and the Subordinated Loans, redeemed the Series C Convertible Preferred Stock and settled the related Embedded Derivative liability. The Company recorded loss on refinancing of $7.1 million during the three-month period ended June 30, 2004. Such loss consisted of a write-off of deferred financing costs of $5.3 million, prepayment penalties of $3.1 million and other expenses of $0.3 million. These expenses were partially offset by the gain on the settlement of the Embedded Derivative of $1.6 million.

Interest (Expense), Net

Interest expense, net of interest income, for the three months ended June 30, 2004, decreased $0.6 million to $5.4 million from $6.0 million for the comparable period in 2003. The decrease in interest expense was primarily due to $0.6 million of capitalized interest relating to a capital project to comply with air emission standards at the Company's Deer Park incineration facility.

Income Taxes

Income tax expense for the three months ended June 30, 2004 increased $1.0 million to $2.3 million from $1.3 million for the comparable period in 2003. Income tax expense for the second quarter of 2004 consisted primarily of current tax expense relating to the Canadian operations of $2.2 million and state tax expense of $0.1 million relating to profitable operations in certain legal entities. Income tax expense for the comparable period of 2003 consisted primarily of Canadian taxes of $1.2 million and state income tax expense of approximately $0.1 million.

EBITDA Contribution

The EBITDA contribution for the three months ended June 30, 2004 increased $9.6 million to $19.4 million from $9.8 million for the comparable period in 2003. The increase from Technical Services was $3.9 million and for Site Services was $3.3 million with an increase in Corporate Items of $2.4 million that related to decreased headcount costs. The combined EBITDA contribution was comprised of revenues of $161.6 million and $172.0 million, net of cost of revenues of $115.8 million and $131.8 million and selling, general and administrative expenses of $26.4 million and $30.5 million for the three months ended June 30, 2004 and 2003, respectively.

Six months ended June 30, 2004 versus the Six months ended June 30, 2003

Revenues

Total revenues for the six months ended June 30, 2004 decreased $9.9 million to $304.4 million from $314.3 million for the comparable period in 2003. Technical Services revenues for the six months ended June 30, 2004 increased $3.2 million to $216.1 million from $212.9 million for the comparable period in 2003. The increases in Technical Services revenue resulted from an improving economy and volume increases realized in the Company's landfill and incineration assets. Site Services revenues for the six months ended June 30, 2004 decreased $12.0 million to $88.1 million from $100.1 million for the comparable period in 2003. Site Services performed one large emergency response job during the six months ended June 30, 2003, which accounted for 17.3% of its revenues for that period. There was no comparable job in the six months ended June 30, 2004. Excluding this one large job, revenue increased $5.2 million, or 6.3%, for the six months ended June 30, 2004 compared to the six months ended June 30, 2003 as a result of growth initiatives in Canada and the Western United States and an improving economy.

Cost of Revenues

Total cost of revenues for the six months ended June 30, 2004 decreased $15.1 million to $223.3 million compared to $238.4 million for the comparable period in 2003. Technical Services cost of revenue increased $5.2 million to $160.3 million from $155.1 million for the comparable period in 2003. Site Services cost of revenue decreased $18.0 million to $57.8 million from $75.8 million for the comparable period in 2003. The increase in cost of revenues for Technical Services was largely a

result of increased energy costs and higher volumes of business. The decrease in cost of revenues for Site Services was attributable to the lack of costs related to a major emergency response in comparison to the same period in 2003. As a percentage of revenues, combined cost of revenues in 2004 decreased 2.5% to 73.4% from 75.9% for the comparable period in 2003. This improvement resulted primarily because of a 1% cost of revenue improvement in outside disposal costs due to the Company's internalization of waste initiatives, and lower headcount expenses.

Selling, General and Administrative Expenses

Selling, general and administrative expenses for the six months ended June 30, 2004 decreased $7.5 million to $49.9 million from $57.4 million for the comparable period in 2003. Technical Services selling, general and administrative expenses for the six months ended June 30, 2004 decreased $6.8 million to $23.1 million from $29.9 million for the comparable period in 2003 primarily due to reduced headcount and decreased foreign exchange transaction losses. Site Services selling, general and administrative expenses were flat at $8.6 million for the six months ended June 30, 2004 compared to the same period of the prior year. Partially offsetting the decreases in headcount for Site Services were increased costs related to the opening of additional locations. Corporate Items selling, general and administrative expenses for the six months ended June 30, 2004 decreased $0.6 million to $18.2 million from $18.8 million for the comparable period in 2003. The decrease was primarily due to decreases in headcount, decreased professional fees, and improved controls over expenses. These expense reductions were offset by higher bonus accruals and expenses associated with the refinancing of the Company's capital structure in June 2004.

Accretion of Environmental Liabilities

Accretion of environmental liabilities for the six-month periods ended June 30, 2004 and 2003 was similar at $5.2 million and $5.5 million, respectively.

Depreciation and Amortization

Depreciation and amortization expense for the six months ended June 30, 2004 decreased $1.4 million to $11.7 million from $13.1 million for the comparable period in 2003. The decrease was primarily due to changes in estimates of the lives of the acquired CSD assets made during 2003.

Other Income (Expense)

As more fully described in the Note 9 in to the financial statements in this report, the Company issued Series C Preferred Stock for $25.0 million in September 2002. The Series C Preferred Stock was recorded on the Company's financial statements as though it consisted of two components, namely (i) non-convertible redeemable preferred stock with a 6.0% annual dividend, and (ii) an embedded derivative (the "Embedded Derivative") which reflected the right of the holders of the Series C Preferred Stock to convert the Series C Preferred Stock into the Company's common stock. On June 30, 2004, the Company redeemed the Series C Preferred Stock and settled the Embedded Derivative liability. Just prior to the settlement, the Company valued the Embedded Derivative using the Black-Scholes option pricing model. The Black-Scholes model determines the value of an option primarily by considering the strike price of the option, the market value of the stock and the volatility of the stock price. The strike price of the Embedded Derivative was $8.00. For the six month period ended June 30, 2004, the Company recorded other expense related to the Embedded Derivative of $1.6 million primarily because of the market price increase of the Company's common stock that occurred during that period. For the six month period ended June 30, 2003, the Company recorded a gain on the Embedded Derivative of $0.5 million. The settlement of the Embedded Derivative liability on June 30, 2004 will result in no additional other income (expense) being recorded in future periods related to the Embedded Derivative. Partially offsetting the expense on the Embedded Derivative during the quarters ended June 30, 2004 and 2003 was respectively a net gain (loss) on the disposal of fixed assets of $0.5 million and $0.3 million.

Loss on Refinancing

As further discussed in Notes 4, 6, and 9 to the financial statements included in this report, the Company previously had outstanding a $100.0 million three-year revolving credit facility (the "Revolving Credit Facility"), $115.0 million of three-year non-amortizing term loans (the "Senior Loans"), $40.0 million of five-year non-amortizing subordinated loans (the "Subordinated Loans"), Series C Convertible Preferred Stock, $0.01 par value (the "Series C Preferred Stock") and the related embedded derivative (the "Embedded Derivative") which reflected the right of the holders of the Series C Preferred Stock to convert into the Company's common stock on the terms set forth in the Series C Preferred Stock. On June 30, 2004, the Company repaid the Revolving Credit Facility, the Senior Loans and the Subordinated Loans, redeemed the Series C Convertible Preferred Stock and settled the related Embedded Derivative liability. The Company recorded loss on refinancing of $7.1 million during the three-month period ended June 30, 2004. Such loss consisted of the write-off of deferred financing costs of $5.3 million, prepayment penalties of $3.1 million and other expenses of $0.3 million. These expenses were partially offset by the gain on the settlement of the Embedded Derivative of $1.6 million.

Interest (Expense), Net

Interest expense, net of interest income, for the six months ended June 30, 2004 decreased $0.7 million to $10.8 million from $11.5 million for the comparable period in 2003. The decrease in interest expense was due to the $1.3 million of capitalized interest relating to a capital project to comply with air emission standards at the Company's Deer Park incineration facility, which was partially offset by the interest cost associated with amortization to interest expense of loan amendment fees for the six months ended June 30, 2004 as compared to the same period in 2003.

Income Taxes

Income tax expense for the six months ended June 30, 2004 increased $1.2 million to $3.5 million from $2.3 million for the comparable period in 2003. Income tax expense for the six months ended June 30, 2004 consisted primarily of Canadian taxes of $3.4 million, state income tax expense of approximately $0.2 million, partially offset by a federal tax benefit of $0.1 million relating to a fiscal 2000 alternative minimum tax carryback refund.

EBITDA Contribution

The EBITDA contribution for the six months ended June 30, 2004 increased $12.7 million to $31.2 million from $18.5 million for the comparable period in 2003. The increase from Technical Services was $4.7 million and for Site Services was $6.2 million, with an increase in Corporate Items of $1.8 million that related to decreased headcount costs. The combined EBITDA contribution was comprised of revenues of $304.4 million and $314.3 million, net of cost of revenues of $223.3 million and $238.4 million and selling, general and administrative expenses of $49.9 million and $57.4 million for the six months ended June 30, 2004 and 2003, respectively.

Liquidity and Capital Resources

Cash and Cash Equivalents

The Company believes that its primary source of liquidity is from cash flows from operations, existing cash, funds available to borrow under the Revolving Facility and anticipated proceeds from assets held for sale. As of June 30, 2004, cash and cash equivalents was approximately $17.4 million, funds available to borrow under the Revolving Facility were $28.5 million and properties held for sale was $12.3 million. As further discussed below under "Financing Arrangements," on June 30, 2004, the Company refinanced its outstanding debt and redeemed its then outstanding Series C Preferred Stock. The refinancing resulted in the Company having both more cash on hand and funds available to borrow under its Revolving Facility.

The Company intends to use its existing cash and cash flow from operations to fund future operating expenses and recurring capital expenditures. The Company anticipates that cash flow provided by operating activities will provide the necessary funds on a short and long-term basis to meet operating cash requirements. In addition, the Company projects that it will continue to meet its debt covenant requirements for the foreseeable future. As part of the CSD acquisition, the Company assumed environmental liabilities of the CSD valued at $184.5 million. The Company performed extensive due diligence investigations with respect to both the amount and timing of such liabilities. The Company anticipates such liabilities will be payable over many years and that cash flow from operations will generally be sufficient to fund the payment of such liabilities when required. However, events not now anticipated (such as future changes in environmental laws and regulations) could require that such payments be made earlier or in greater amounts than now anticipated, which could adversely affect the Company's cash flow and financial condition.

Cash Flows for the six months ended June 30, 2004

For the six months ended June 30, 2004, the Company generated approximately $15.0 million of cash from operating activities. Non-cash expenses recorded for the six months ended June 30, 2004 totaled $26.5 million. These adjustments consisted primarily of non-cash expenses of $11.7 million for depreciation and amortization, $5.2 million for the accretion of environmental liabilities, $0.5 million of allowance for doubtful accounts, $1.6 million for amortization of deferred financing costs, loss on refinancing of $7.1 million, and a loss on the embedded derivative of $1.6 million, partially offset by $0.5 million of gain on the sale of fixed assets and a $0.6 million foreign currency gain on intercompany transactions. Other sources of cash totaled $8.0 million which primarily consisted of a decrease in accounts receivable of $0.3 million, a decrease in unbilled accounts receivable of $1.2 million, a $0.7 million increase in deferred revenue, a $0.5 million increase in accrued disposal costs,

a $2.9 million increase in other accrued expenses, and a $2.5 million increase in income taxes payable. Other uses of cash totaled $10.1 million and consisted primarily of a decrease in environmental liabilities of $5.7 million, an increase in prepaid expenses of $1.5 million, an increase of $1.2 million in other assets, an increase of $0.8 million in supplies inventories, and a decrease in accounts payable of $0.9 million.

For the six months ended June 30, 2004, the Company generated $72.7 million of cash from investing activities. This consisted of proceeds from the sale of restricted investments of $84.9 million and proceeds from the sale of fixed assets of $0.7 million, partially offset by the cost of additions to property, plant and equipment and permits of $12.9 million.

For the six months ended June 30, 2004, the Company used $76.7 million of cash in its financing activities. Cash from financing activities consisted primarily of the issuance of Senior Secured Notes (net of unamortized issue discount) of $148.0 million. This was offset by repayments of Senior Loans and Subordinated Loans of $107.2 million and $40.0 million, respectively, repayment of the former Revolving Credit Facility of $35.2 million, and redemption of the Series C Preferred Stock of $25.0 million. Additional offsets were deferred financing costs incurred of $10.2 million, debt extinguishment payments of $3.4 million, dividend payments of $2.0 million, a change in uncashed checks of $1.1 million, and payments on capital leases of $0.7 million.

The Company used the cash generated from investing activities of $72.7 million together with the $15.0 million of cash generated from operations primarily to fund the investing activities of $76.7 million previously discussed, and increase the amount of cash on hand by $11.0 million.

Cash Flows for the six months ended June 30, 2003

For the six months ended June 30, 2003, the Company generated approximately $11.1 million of cash from operating activities. Non-cash expenses recorded for the six months ended June 30, 2003 totaled $21.5 million. These adjustments consisted primarily of non-cash expenses of $13.1 million for depreciation and amortization, $5.5 million for the accretion of environmental liabilities, $1.1 million of allowance for doubtful accounts and $1.1 million for amortization of deferred financing costs. Other sources of cash for the six months ended June 30, 2003 totaled $17.1 million which primarily consisted of a decrease in accounts receivable of $8.6 million, a decrease in prepaid expenses of $2.2 million, a decrease in deferred costs of $1.2 million, a decrease in unbilled accounts receivable of $3.1 million, and an increase in accounts payable of $1.9 million. Other uses of cash totaled $13.5 million and consisted primarily of a decrease in deferred revenue of $6.6 million, which was due primarily to improvements realized by the integration of the CSD into the Company's operations, a decrease in environmental liabilities of $4.3 million, a decrease in income taxes payable of $1.3 million and a decrease in other assets of $1.2 million.

For the six months ended June 30, 2003, the Company used $41.9 million of cash in investing activities. This consisted of additions to property, plant and equipment and permits of $18.4 million and restricted investments purchased of $23.4 million to support the letters of credit issued relating to financial assurance for closure and post-closure obligations. These uses were partially offset by proceeds from the sale of fixed assets of $0.2 million.

For the six months ended June 30, 2003, the Company raised $21.8 million of cash from financing activities. Cash from financing activities consisted primarily of net borrowings of $22.5 million on the Revolving Credit Facility, $0.9 million of uncashed checks, proceeds from the exercise of stock options of $0.4 million and proceeds from the employee stock purchase plan of $0.3 million. Partially offsetting this were repayments of $0.4 million on Senior Loans and dividend payments of $0.9 million.

The Company used the cash generated from financing activities of $21.8 million together with the $11.1 million of cash generated from operations primarily to fund the investing activities of $41.9 million previously discussed, and decrease the amount of cash on hand by $8.9 million.

Financing Arrangements

As described in the Annual Report on Form 10-K for the year ended December 31, 2003, the Company previously had outstanding a $100.0 million three-year revolving credit facility (the "Revolving Credit Facility"), $115.0 million of three-year non-amortizing term loans (the "Senior Loans") and $40.0 million of five-year non-amortizing subordinated loans (the "Subordinated Loans"). In addition to such financings, the Company had established a letter of credit facility (the "L/C Facility") under which the Company could obtain up to $100.0 million of letters of credit by providing cash collateral equal to 103% of the amount of such outstanding letters of credit. On June 30, 2004, the Company's debt under the Revolving Credit Facility, the Senior Loans and the Subordinated Loans was replaced by $150.0 million of eight-year Senior Secured Notes (the "Senior Secured Notes") and a $30.0 million revolving credit facility (the "Revolving Facility") as described below. Additionally, the L/C Facility was replaced with a synthetic letter of credit facility (the "Synthetic LC Facility") whereby the Company may obtain up to $90.0 million of letters of credit as described below.

The principal terms of the Senior Secured Notes, the Revolving Facility, and the Synthetic LC Facility are as follows:

Senior Secured Notes. The Senior Secured Notes were issued under an Indenture dated June 30, 2004 (the "Indenture"). The Senior Secured Notes bear interest at 11.25% and mature on July 15, 2012. The Senior Secured Notes were issued at a $2.0 million discount that results in an effective yield of 11.5%. Interest is payable semiannually in cash on each January 15 and July 15, commencing on January 15, 2005.

The Senior Secured Notes are secured by a second-priority lien on all of the domestic assets of the Company and its domestic subsidiaries that secure the Company's reimbursement obligations under the Synthetic LC Facility on a first-priority basis (as described below); provided that such assets do not include any capital stock, notes, instruments, other equity interests of any of the Company's subsidiaries, accounts receivable, and certain other excluded collateral as provided in the Indenture. The Senior Secured Notes are jointly and severally guaranteed on a senior secured second-lien basis by substantially all of the Company's existing and future domestic subsidiaries. The Senior Secured Notes are not guaranteed by the Company's foreign subsidiaries.

The Indenture provides for certain covenants, the most restrictive of which requires the Company, within 120 days after the close of each twelve-month period ending on June 30 of each year (beginning June 30, 2005) to apply an amount equal to 50% of the period's Excess Cash Flow (as defined below) to either prepay, repay, redeem or purchase its first-lien obligations under the Revolving Facility and Synthetic LC Facility or the offer to the repurchase of all or part of the then outstanding Senior Secured Notes. "Excess Cash Flow" is defined in the Indenture as consolidated EBITDA less interest expense, all taxes paid or accrued in the period, capital expenditures made in cash during the period, and all cash spent on environmental monitoring, remediation or relating to environmental liabilities of the Company.

The $6.2 million cost associated with the issuance of the Senior Secured Notes was recorded as a component of deferred financing costs and is being amortized to interest expense over the life of the Senior Secured Notes.

Revolving Facility. Both the Revolving Facility and the Synthetic LC Facility were established under a Loan and Security Agreement dated June 30, 2004 (the "Credit Agreement") among the Company, Fleet Capital Corporation as agent for the Revolving Lenders thereunder, Credit Suisse First Boston as agent for the LC Facility Lenders thereunder, and certain other parties. The Revolving Facility allows the Company to borrow up to $30.0 million in cash, based upon a formula of eligible accounts receivable. This total is separated into two lines of credit, namely a line for the Company and its U.S. subsidiaries equal to $24.7 million and a line for the Company's Canadian subsidiaries of $5.3 million. The Revolving Facility also allows the Company to have issued up to $10.0 million of letters of credit, with the outstanding amount of such letters of credit reducing the maximum amount of borrowings permitted under the Revolving Facility. At June 30, 2004, the Company had no borrowings and $1.5 million of letters of credit outstanding under the Revolving Facility, and the Company had approximately $28.5 million available to borrow. Amounts outstanding under the Revolving Facility bear interest at an annual rate of either the U.S. or Canadian prime rate or the Eurodollar rate (depending on the currency of the underlying loan) plus 1.50%. The Credit Agreement requires the Company to pay an unused line fee of 0.125% per annum on the unused portion of the Revolving Facility. The Revolving Facility matures on June 30, 2009.

The Revolving Facility is secured by a first security interest in accounts receivable and a second security interest in substantially all other assets. The Revolving Facility prohibits the payment of dividends on the Company's common stock but allows the payment of dividends on the Company's Series B Preferred Stock.

Under the Credit Agreement, the Company is required to maintain a maximum Leverage Ratio (as defined below) of no more than 3.00 to 1.0, 2.80 to 1.0 and 2.55 to 1.0 for the four-quarter periods ending September 30, 2004, December 31, 2004 and March 31, 2005, respectively. The maximum Leverage Ratio is then reduced to no more than 2.50 to 1.0 for the four-quarter period ending June 30, 2005, and then, in approximately equal increments, to no more than 2.30 to 1.0 for the four-quarter period ending December 31, 2008, and to no more than 2.25 to 1.0 for each succeeding quarter. The Leverage Ratio is defined as the ratio of the consolidated indebtedness of the Company to its consolidated EBITDA achieved for the latest four-quarter period.

The Company is also required under the Credit Agreement to maintain a minimum Interest Coverage Ratio (as defined below) of not less than 2.25 to 1.0, 2.40 to 1.0 and 2.65 to 1.0 for the four-quarter periods ending September 30, 2004, December 31, 2004 and March 31, 2005, respectively. The minimum Interest Coverage Ratio is then increased to not less than 2.70 to 1.0 for the four-quarter period ending June 30, 2005, and then, in approximately equal increments, to not less than 2.85 to 1.0 for the four-quarter period ending December 31, 2006 through December 31, 2008, and not less than 3.00 to 1.0 for each succeeding four-quarter period. The Interest Coverage Ratio is defined as the ratio of the Company's consolidated EBITDA to its consolidated interest expense.

The Company is also required to maintain a fixed charge coverage ratio of not less than 1.0 to 1.0 for each four-quarter period, commencing with the quarter ending December 31, 2004. The Company must also achieve at least $15.0 million in consolidated EBITDA for the quarter ending September 30, 2004.

The $0.3 million cost associated with the issuance of the Revolving Facility was recorded as a component of deferred financing costs and is being amortized to interest expense over the life of the Revolving Facility.

Synthetic LC Facility. The Synthetic LC Facility provides that Credit Suisse First Boston (the "LC Facility Issuing Bank") will issue up to $90.0 million of letters of credit at the Company's request. The LC Facility requires that the LC Facility Lenders maintain a cash account (the "Credit-Linked Account") to collateralize the Company's outstanding letters of credit. Should any such letter of credit be drawn in the future and the Company fail to satisfy its reimbursement obligation, the LC Facility Issuing Bank would be entitled to draw upon the appropriate portion of the $90.0 million in cash which the LC Facility Lenders under the Credit Agreement have deposited into the Credit-Linked Account. Acting through the LC Facility Agent, the LC Facility Lenders would then have the right to exercise their rights as first-priority lien holders (second-priority as to receivables) on substantially all of the assets of the Company and its domestic subsidiaries. The Company has no right, title or interest in the Credit-Linked Account established under the Credit Agreement for purposes of the Synthetic LC Facility. The Company is required to pay (i) a quarterly participation fee at the annual rate of 5.35% on the average daily balance in the Credit-Linked Account and (ii) a quarterly fronting fee at the annual rate of 0.30% of the average daily aggregate maximum amount available under the Synthetic LC Facility. At June 30, 2004, letters of credit outstanding under the Synthetic LC facility were $89.4 million. The term of the Synthetic LC Facility will expire on June 30, 2009.

The $3.1 million cost associated with the issuance of the Synthetic LC Facility was recorded as a component of deferred financing costs and is being amortized to interest expense over the life of the Synthetic LC Facility.

Stockholder Matters

Dividends on the Company's Series B Convertible Preferred Stock are payable on the 15th day of January, April, July and October, at the rate of $1.00 per share, per quarter; 112,000 shares are outstanding. Under the terms of the Series B Preferred Stock, the Company can elect to pay dividends in cash or in common stock with a market value equal to the amount of the dividend payable. The Company paid in cash the dividends due on January 15, 2003 and April 15, 2003 but, because of restrictions in the Company's prior debt agreements which were refinanced on June 30, 2004, the Company issued shares of the Company's common stock in payment of the dividends due from July 15, 2003 through April 15, 2004. The Company now anticipates that dividends on the Series B Preferred Stock will be paid in cash for the foreseeable future.

New Accounting Pronouncements

In January 2003, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities." FIN 46 requires that unconsolidated variable interest entities must be consolidated by their primary beneficiaries. A primary beneficiary is the party that absorbs a majority of the entity's expected losses or residual benefits. FIN 46 applies immediately to variable interest entities created after January 31, 2003. In December 2003, the FASB issued FIN 46-R. FIN 46-R deferred to March 15, 2004 the effective date for variable interest entities created before January 31, 2003. FIN 46 and FIN 46-R will have no impact on the Company's results of operations since it has no variable interest entities.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

The Company is subject to market risk on the interest that it pays on its debt due to changes in the general level of interest rates. The Company's philosophy in managing interest rate risk is to borrow at fixed rates for longer time horizons to finance non-current assets and, to the extent required, to borrow at variable rates for working capital and other short term needs. The following table provides information regarding the Company's fixed rate borrowings at June 30, 2004 (in thousands):

Scheduled Maturity Dates	Six Months Remaining 2004	2005	2006	2007	2008	Thereafter	Total
Senior Secured Notes	$ —	$ —	$ —	$ —	$ —	$ 150,000	$ 150,000
Capital Lease Obligations	727	1,448	1,408	1,000	696	60	5,339
	$ 727	$ 1,448	$ 1,408	$ 1,000	$ 696	$ 150,060	$ 155,339
Weighted average interest rate on fixed rate borrowings	11.4%	11.4%	11.4%	11.5%	11.5%	11.5%	

In addition to the fixed rate borrowings described in the table above, the Company has a $30.0 million Revolving Facility which bears interest at variable interest rates of either the U.S. or Canadian prime rate or the Eurodollar rate plus 1.50%, depending on the currency of the underlying loan. This total of $30.0 million is separated into two lines of credit, namely a line for the Company and its U.S. subsidiaries equal to $24.7 million and a line for the Company's Canadian subsidiaries of $5.3 million. No amount was outstanding under the Revolving Facility at June 30, 2004.

Historically, the Company has not entered into derivative or hedging transactions, nor has the Company entered into transactions to finance debt off of its balance sheet. The Company views its investment in the Canadian subsidiaries as long-term; thus, the Company has not entered into any hedging transactions between the Canadian dollar and the U.S. dollar. The Canadian subsidiaries transact approximately 25.8% of their business in U.S. dollars and at any period end have cash on deposit in U.S. dollars and outstanding U.S. dollar accounts receivable related to these transactions. These cash and receivable accounts are vulnerable to foreign currency translation gains or losses. During the three- and six- month periods ended June 30, 2004, the U.S. dollar rose approximately 2.2% and 3.4%, respectively, against the Canadian dollar resulting in foreign currency gains of $2 thousand and $350 thousand, respectively. During the three- and six-month periods ended June 30, 2003, the U.S. dollar fell approximately 7.5% and 16.5%, respectively, against the Canadian dollar resulting in foreign currency losses of $0.8 million and $2.3 million, respectively. The average exchange rate for the three- and six-month periods ended June 30, 2004 was 1.35 and 1.33 Canadian dollars to the U.S. dollar, respectively. Had the Canadian dollar been 10.0% stronger against the U.S. dollar, the Company would have reported decreased net loss by approximately $0.4 million and $0.6 million for the three- and six-month periods ended June 30, 2004, respectively. Had the Canadian dollar been 10.0% weaker against the U.S. dollar, the Company would have reported increased net loss by approximately $0.4 million and $0.6 million for the three- and six-month periods ended June 30, 2004, respectively. The Company is subject to minimal market risk arising from purchases of commodities since no significant amount of commodities are used in the treatment of hazardous waste.

Item 4. Controls and Procedures

Since the acquisition of the assets of the Chemical Services Division (the "CSD") of Safety-Kleen Corp. ("Safety-Kleen") effective September 7, 2002 (see Note 2 to the financial statements included in this report), the Company has focused upon integrating the operations acquired into the Company's disclosure controls and procedures and internal controls. Safety-Kleen has publicly disclosed that it historically had material deficiencies in many of its financial systems, processes and related internal controls. Due to the deficiencies in these systems and the Company's belief that it will be able to utilize its own systems in order to improve the operations of the former CSD, the decision was made to integrate the United States operations of the former CSD into the Company's business and financial reporting systems effective as of the acquisition date. As anticipated, the Company has experienced certain systems and efficiency issues during the initial period of the integration. The Company has made significant progress in integrating the CSD into the Company's business and financial reporting systems and believes that all major systems for operations within the United States and certain systems in Canada are substantially integrated and efficiently operating as of June 30, 2004. During the integration process, the Company identified the need for various enhancements to address needs that are unique to the CSD business and to improve system efficiencies. In addition, the significant increase in transaction volume, as well as the significant increase in the number of new users of the Company's systems, has increased the risk of human error or mistake during the integration period. Likewise, the acquisition and integration of a business much larger in size and scope of operations increases the risk that conditions may have been introduced that the Company's design of its systems of control have not anticipated. Furthermore, Safety-Kleen's preexisting deficiencies in financial systems, processes and related internal controls increased the risk that the historical unaudited financial statements of the CSD's operations and cash flows which Safety-Kleen has provided to the Company were not accurate.

The Company does not expect that its disclosure controls and procedures or its internal controls will prevent all error and all fraud. "Internal controls" are procedures, which are designed with the objective of providing reasonable assurance that (1) transactions are properly authorized; (2) assets are safeguarded against unauthorized or improper use; and (3) transactions are properly recorded and reported, all so as to permit the preparation of financial statements in conformity with generally accepted accounting principles in the United States. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. In addition, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

In October 2002, the Company established a Disclosure Committee pursuant to the provisions of the Sarbanes-Oxley Act. The Committee is chaired by the Company's General Counsel and consists of the Company's Chief Executive Officer, Chief Financial Officer, Corporate Controller, Senior Vice President of Risk Management and the Vice President responsible for oversight of the environmental liabilities associated with discontinued facilities and operations. From time to time, the Committee also confers with two outside consultants, one an expert in investor relations and the other, an attorney specializing in Securities and Exchange Commission (the "SEC") matters.

In connection with the audit for the year ended December 31, 2003, PricewaterhouseCoopers LLP ("PwC") advised the Audit Committee of the Company's Board of Directors, and the Chief Financial Officer and the Corporate Controller advised the Disclosure Committee, that during the course of the audit of the Company's financial statements for the year ended December 31, 2003, PwC noted a material weakness existed in the reconciliation and calculation of deferred revenue. PwC also noted that reportable conditions existed for environmental and landfill accounting, valuation of unbilled receivables, fixed asset accounting and income tax accounting.

The Chief Financial Officer and Corporate Controller have advised the Audit Committee and the Disclosure Committee that the Company has performed substantial additional procedures designed to ensure that these internal control deficiencies do not lead to material misstatements in its Consolidated Financial Statements and to enable the completion of the audit of its Consolidated Financial Statements, notwithstanding the presence of the internal control weaknesses noted above.

The Company has addressed the material weaknesses noted, and believes it has implemented an improved process to properly document and calculate deferred revenue on a go forward basis. Efforts to enhance the Company's systems and internal controls are ongoing.

In light of this information, the Company's Disclosure Committee carried out an evaluation, with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of its disclosure controls and procedures pursuant to the Securities Exchange Act Rule 13a-15. "Disclosure controls and procedures" are controls and procedures that are designed to ensure that information required to be disclosed by the Company in reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Based upon that evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded that while the Company's disclosure controls and procedures are substantially effective for these purposes as of June 30, 2004, the Company should continue its efforts to further improve its disclosure controls and procedures.

There have been no significant changes in the Company's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, other than the ongoing actions described above, many of which were begun prior to the most recent evaluation date.

CLEAN HARBORS, INC. AND SUBSIDIARIES

PART II—OTHER INFORMATION

Item 1 – *Legal Proceedings*

See Note 7, "Legal Proceedings and Contingencies," to the financial statements included in this report, which description is incorporated herein by reference.

Item 2 – *Changes in Securities*

On June 30, 2004, the Company issued to seven institutional investors common stock purchase warrants exercisable at $8.00 per share for an aggregate of 2,775,000 shares of the Company's common stock. Such warrants are exercisable at any time on or prior to September 10, 2009. Such warrants were issued in connection with the redemption by the Company on June 30, 2004 of all of the Company's previously outstanding 25,000 shares of Series C Convertible Preferred Stock which were then held by such investors. In connection with such issuance, the investors represented that they were acquiring such warrants and, to the extent they subsequently exercise such warrants, they will be acquiring the shares of common stock issuable upon such exercise for their own account and not for resale in connection with any distribution except pursuant to sales registered or exempted under the Securities Act of 1933, as amended (the "Securities Act"). Accordingly, the Company relied upon the exemption from registration provided by Section 4(2) of the Securities Act in connection with the issuance of such warrants to such investors **.**

Item 3 – *Defaults Upon Senior Debt* – None.

Item 4 – *Submission of Matters to a Vote of Security Holders*

The Company's 2004 Annual Meeting of the Stockholders was held on May 13, 2004. At the meeting, the Stockholders elected John P. DeVillars and Daniel J. McCarthy to serve as directors of the Company for a three-year term, until the 2007 Annual Meeting of Stockholders. Other directors whose term of office as director continued after the meeting were: John D. Barr, John F. Kaslow, Alan S. McKim, John T. Preston, Thomas J. Shields and Lorne R. Waxlax. Of the 12,955,680 shares voting at the meeting, 12,930,814 shares (99.8%) were voted in favor of the election of Mr. DeVillars and 12,931,174 shares (99.8%) were voted in favor of the election of Mr. McCarthy.

Item 5 – *Other Information* – None.

Item 6 – *Exhibits and Reports on Form 8-K*

a. Exhibits

Item No.	Description	Location
4.28	Loan and Security Agreement dated as of June 30, 2004 by and among Credit Suisse First Boston as Administrative Agent under the LC Facility, Fleet Capital Corporation as Administrative Agent and Sole Arranger under the Revolving Facility, Goldman Sachs Credit Partners L.P. as Syndication Agent under the LC Facility, Credit Suisse First Boston as Documentation Agent under the LC Facility, Credit Suisse First Boston and Goldman Sachs Credit Partners L.P. as Joint Lead Arrangers and Joint Lead Bookrunners under the LC Facility, the other financial institutions party thereto from time to time as Lenders, Clean Harbors, Inc. and the subsidiaries of Clean Harbors, Inc. party thereto as Borrowers and the Guarantors named therein as Guarantors	Filed herewith
4.28A	Amendment No. 1 to Loan and Security Agreement dated as of July 20, 2004 by and among Credit Suisse First Boston as Administrative Agent under the LC Facility, Fleet Capital Corporation as Administrative Agent and Sole Arranger under the Revolving Facility, Goldman Sachs Credit Partners L.P. as Syndication Agent under the LC Facility, Credit Suisse First Boston as Documentation Agent under the LC Facility, Credit Suisse First Boston and Goldman Sachs Credit Partners L.P. as Joint Lead Arrangers and Joint Lead Bookrunners under the LC Facility, the other financial institutions party thereto from time to time as Lenders, Clean Harbors, Inc. and the subsidiaries of Clean Harbors, Inc. party thereto as Borrowers and the Guarantors named therein as Guarantors	Filed herewith

4.29	Security Agreement dated as of June 30, 2004 among Clean Harbors, Inc., various subsidiaries of Clean Harbors, Inc., U.S. Bank National Association as trustee for the Second Lien Note Creditors and Credit Suisse First Boston as Collateral Agent and LC Facility Administrative Agent	Filed herewith
4.30	Purchase Agreement dated as of June 17, 2004 by and among Credit Suisse First Boston LLC, Goldman, Sachs & Co., and Clean Harbors, Inc. and the subsidiaries of Clean Harbors, Inc. party thereto	Filed herewith
4.31	Registration Rights Agreement dated as of June 30, 2004 by and among Credit Suisse First Boston LLC, Goldman Sachs & Co., and Clean Harbors, Inc. and the subsidiaries of Clean Harbors, Inc. party thereto	Filed herewith
4.32	Indenture dated as of June 30, 2004 by and among Clean Harbors, Inc., the Guarantors party thereto and U.S. Bank National Association as Trustee	Filed herewith
10.48	Form of Common Stock Purchase Warrant expiring September 10, 2009	Filed herewith
31	Rule 13a-14a/15d-14(a) Certifications	Filed herewith
32	Section 1350 Certifications	Filed herewith

b. Reports on Form 8-K

During the fiscal quarter ended June 30, 2004, the Company filed a Report on Form 8-K dated April 23, 2004. Pursuant to Item 12 of Form 8-K, such Report furnished to the Securities and Exchange Commission the Company's press release dated April 23, 2004, which contains an earnings announcement for the quarter ended March 31, 2004.

During the fiscal quarter ended June 30, 2004, the Company also filed a Report on Form 8-K dated June 18, 2004. Pursuant to Item 12 of Form 8-K, such Report furnished to the Securities and Exchange Commission the Company's press release dated June 18, 2004, which announced the pricing and final terms of transactions to refinance the Company's debt outstanding under its existing credit facilities.

CLEAN HARBORS, INC. AND SUBSIDIARIES

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 thereunto duly authorized.

CLEAN HARBORS, INC.
Registrant

Dated: August 6, 2004

By: /s/ ALAN S. MCKIM

Alan S. McKim
President and Chief Executive Officer

Dated: August 6, 2004

By: /s/ MARK S. BURGESS

Mark S. Burgess
Executive Vice President and Chief Financial Officer

Exhibit 4.28

LOAN AND SECURITY AGREEMENT

by and among

CREDIT SUISSE FIRST BOSTON,
acting through its Cayman Islands Branch
as Administrative Agent under the LC Facility,

FLEET CAPITAL CORPORATION,
as Administrative Agent
and Sole Arranger under the Revolving Facility,

GOLDMAN SACHS CREDIT PARTNERS L.P.,
as Syndication Agent under the LC Facility,

CREDIT SUISSE FIRST BOSTON, acting through its Cayman Islands branch,
as Documentation Agent under the LC Facility,

CREDIT SUISSE FIRST BOSTON and GOLDMAN SACHS CREDIT PARTNERS L.P.,
as Joint Lead Arrangers and Joint Lead Bookrunners under the LC Facility,

The other financial institutions party hereto
from time to time as Lenders,

CLEAN HARBORS, INC. AND THE SUBSIDIARIES NAMED HEREIN,
as Borrowers

and

THE GUARANTORS NAMED HEREIN,
as Guarantors

Dated: June 30, 2004

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LOAN AND SECURITY AGREEMENT

This Loan and Security Agreement dated June 30, 2004 (this " **Agreement**") is entered into by and among Credit Suisse First Boston, acting through its Cayman Islands branch ("**CSFB**"), as administrative agent for the LC Facility (as defined below) (in such capacity, the " **LC Facility Administrative Agent**"), Fleet Capital Corporation, a Rhode Island corporation (" **FCC**"), as administrative agent for the Revolving Facility (as defined below) (in such capacity, the "**Revolving Administrative Agent** ") and sole arranger and bookrunner for the Revolving Facility (in such capacity, the " **Revolving Arranger**"), Goldman Sachs Credit Partners L.P. ("**GSCP**"), as syndication agent for the LC Facility (in such capacity, the " **LC Facility Syndication Agent**"), Credit Suisse First Boston, acting through its Cayman Islands branch, as documentation agent for the LC Facility (in such capacity, "**Documentation Agent**"), CSFB and GSCP, as joint lead arrangers and bookrunners under the LC Facility (in such capacity, the " **LC Facility Joint Lead Arrangers**"), Clean Harbors, Inc., a Massachusetts corporation (" **Parent**"), the Canadian Borrowers (as defined herein), and each of the other Subsidiaries (as defined herein) of Parent from time to time a party hereto (each such Subsidiary, together with Parent and Canadian Borrowers, a " **Credit Party**" and, collectively, "**Credit Parties**").

W I T N E S S E T H :

WHEREAS, Credit Parties have requested that Agents and Lenders enter into financing arrangements with Credit Parties pursuant to which Agents and Lenders may make loans and provide other financial accommodations to Credit Parties and the LC Facility Issuing Bank will issue LC Facility Letters of Credit for the account of US Borrowers;

WHEREAS, Agents and Lenders are willing to make such loans and provide such financial accommodations and the LC Facility Issuing Bank is willing to issue Letters of Credit on the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

For purposes of this Agreement, the following terms shall have the respective meanings given to them below:

1.1 "**Accounts**" shall mean all present and future rights of Credit Parties to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by Chattel Paper or an Instrument, (a) for Inventory that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, or (c) arising out of the use of a credit or charge card or information contained on or for use with the card.

1.2 "**Accounts Collateral**" shall have the meaning given such term in Section 5.1(a).

1.3 "**Accounts Collateral Agent**" means, (i) prior to the Discharge of Revolving Obligations, the Revolving Administrative Agent and (ii) following the Discharge of Revolving Obligations, the LC Facility Collateral Agent.

1.4 "**Acquisition Consideration**" shall mean the purchase consideration for any Permitted Acquisition and all other payments by Parent or any of its Subsidiaries in exchange for, or as part of, or in connection with, any Permitted Acquisition, whether paid in cash or by exchange of Capital Stock or of properties or otherwise and whether payable at or prior to the consummation of such Permitted Acquisition or deferred for payment at any future time, whether or not any such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Indebtedness, "earn-outs" and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any person or business; *provided* that any such future payment that is subject to a contingency shall be considered Acquisition Consideration only to the extent of the reserve, if any, required under GAAP at the time of such sale to be established in respect thereof by Parent or any of its Subsidiaries.

1.5 "**Act**" shall have the meaning set forth in Section 15.1.

1.6 "**Adjusted Eurodollar Rate**" shall mean, with respect to each Interest Period for any Eurodollar Rate Loan, the rate per annum (rounded upwards, if necessary, to the next one-sixteenth (1/16) of one percent (1%) determined by dividing (a) the Eurodollar Rate for such Interest Period by (b) a percentage equal to: (i) one (1) minus (ii) the Reserve Percentage. For purposes hereof, "Reserve Percentage" shall mean the reserve percentage, expressed as a decimal, prescribed by any United States or foreign banking authority for determining the reserve requirement which is or would be applicable to deposits of US Dollars in a non-United States or an international banking office of Reference Bank used to fund a Eurodollar Rate Loan or any Eurodollar Rate Loan made with the proceeds of such deposit, whether or not the Reference Bank actually holds or has made any such deposits or loans. The Adjusted Eurodollar Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage.

1.7 "**Adjusted Net Worth**" shall mean as to any Person, at any time, in accordance with GAAP (except as otherwise specifically set forth below), on a consolidated basis for such Person and its Subsidiaries (if any), the amount equal to the difference between: (a) the aggregate net book value of all assets of such Person and its Subsidiaries after deducting from such book values all appropriate reserves in accordance with GAAP (including all reserves for doubtful receivables, obsolescence, depreciation and amortization) and (b) the aggregate amount of the Indebtedness and other liabilities of such Person and its Subsidiaries (including tax and other proper accruals).

1.8 "**Administrative Questionnaire**" shall mean a duly completed questionnaire in the form of Exhibit D-3 hereto.

1.9 "**Administrative Agents**" shall mean the collective reference to the LC Facility Administrative Agent and the Revolving Administrative Agent, and their respective successors and assigns.

1.10 "**Affiliate**" shall mean, with respect to a specified Person, any other Person (a) which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified person; (b) for purposes of Section 9.12 only, which beneficially owns or holds five percent (5%) or more of any class of the Voting Stock or other equity interest of such specified person; or (c) for purposes of Section 9.12 only, of which five percent (5%) or more of the Voting Stock or other equity interest is beneficially owned or held by such specified person or a Subsidiary of such specified person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with") when used with respect to any specified person shall mean 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 Stock, by agreement or otherwise.

1.11 "**Agents**" shall mean the collective reference to the Administrative Agents, Collateral Agents, the LC Facility Syndication Agent, the LC Facility Issuing Bank, the LC Facility Joint Lead Arrangers and the Revolving Arranger.

1.12 "**Agreement**" shall have the meaning set forth in the preamble to this agreement.

1.13 "**Anti-Terrorism Laws**" shall have the meaning set forth in Section 8.21.

1.14 "**Applicable Percentage**" shall mean, with respect to any fiscal quarter, the applicable percentage set forth below opposite the applicable Leverage Ratio as of the last day of such fiscal quarter as set forth on the compliance certificate delivered pursuant to Section 9.6 in respect of such fiscal quarter:

Leverage Ratio	Applicable Percentage
$\geq$ 2.0:1.0	50%
< 2.0:1.0 and $\geq$ 1.5:1.0	25%
< 1.5:1.0	0%

1.15 "**Applicable Rate**" shall mean one and one half percent (1.50%) per annum.

1.16 "**Approved Fund**" shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

1.17 "**Asset Sale**" shall mean (a) any direct or indirect conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any Sale and Leaseback Transaction) of any property excluding sales of inventory and dispositions of cash equivalents, in each case, in the ordinary course of business, by Parent or any of its Subsidiaries and (b) any issuance or sale of any Capital Stock of any Subsidiary of Parent, in each case, to any person other than Parent or any Credit Party. Notwithstanding the

foregoing, no sale or disposition permitted by clauses (b)(i)-(b)(iv) of Section 9.7 shall constitute an Asset Sale.

1.18 "**Assignment and Acceptance**" means an Assignment and Acceptance between a Lender and an Eligible Assignee in the form of Exhibit D-1 hereto, in the case of an assignment of Revolving Loan Commitments, Revolving Loans and participations in Revolving Letter of Credit Accommodations, and Exhibit D-2 hereto an assignment of Credit-Linked Deposits and participations in LC Facility Letters of Credit.

1.19 "**Blocked Accounts**" shall mean, collectively, the US Blocked Accounts and the Canadian Blocked Accounts.

1.20 "**Borrower Representative**" shall have the meaning set forth in Section 2.5 hereof.

1.21 "**Borrowers**" shall mean, collectively, US Borrowers and Canadian Borrowers; each sometimes being referred to herein individually as a "**Borrower**".

1.22 "**Borrowing Base**" shall mean, as to US Borrowers, the US Borrowing Base and as to Canadian Borrowers, the Canadian Borrowing Base, and, for the purposes of the last sentence of Section 2.2 and Section 2.8(b)(v), the collective reference to the US Borrowing Base and the Canadian Borrowing Base.

1.23 "**Borrowing Base Certificate**" shall mean, collectively, the US Borrowing Base Certificate and the Canadian Borrowing Base Certificate.

1.24 "**Business Day**" shall mean (a) in connection with any Canadian Revolving Loans made or provided to a Canadian Borrower, or other matters related exclusively to a Canadian Borrower, any day (i) other than a Saturday or Sunday or other day on which commercial banks are authorized or required to close under the laws of the State of New York, the Commonwealth of Massachusetts or the Province of Ontario, and (ii) on which Canadian Lender's offices and The Toronto-Dominion Bank are open for the transaction of business and (b) in connection with any LC Facility Letters of Credit, US Revolving Loans or Revolving Letter of Credit Accommodations made or provided to any US Borrower, any day other than a Saturday, Sunday, or other day on which commercial banks are authorized or required to close under the laws of the State of New York or the Commonwealth of Massachusetts and a day on which the Reference Bank and Administrative Agents are open for the transaction of business, except that if a determination of a Business Day shall relate to any Eurodollar Rate Loans, the term Business Day shall also exclude any day on which banks are closed for dealings in dollar deposits in the London interbank market or other applicable Eurodollar Rate market.

1.25 "**Canadian Accounts Collateral**" shall have the meaning set forth in Section 5.2.

1.26 "**Canadian Agents**" shall mean the Canadian Collateral Agent and the Revolving Administrative Agent acting with respect to the Canadian Revolving Facility.

1.27 "**Canadian Blocked Accounts**" shall have the meaning set forth in Section 6.3(e).

1.28 "**Canadian Borrowers**" shall mean, collectively, the following (together with their respective successors and assigns): CH Canada Holdings Corp., a Nova Scotia unlimited liability corporation; CH Canada GP, Inc., a Canadian corporation; Clean Harbors Canada, Inc., a New Brunswick corporation; Clean Harbors Canada LP, an Ontario limited partnership; Clean Harbors Mercier, Inc., a Quebec corporation; Clean Harbors Quebec, Inc., a Quebec corporation; 510127 N.B. Inc., a New Brunswick corporation; and each other Subsidiary of Parent which becomes a Canadian Borrower pursuant to Section 9.26(b).

1.29 "**Canadian Borrowing Base**" shall mean, at any time, the amount for each Canadian Borrower equal to (a) eighty percent (80%) of the Net Amount of Eligible Accounts of each such Canadian Borrower (including all Municipal Government Accounts that are Eligible Accounts), plus (b) the lesser of eighty percent (80%) of the Net Amount of Federal Government Accounts of each such Canadian Borrower that are Eligible Accounts or C$1,000,000 less (c) any Reserves attributable to each such Canadian Borrower (including, without limitation, adjustments with respect to Liens created by applicable law which rank or are capable of ranking prior or *pari passu* with Revolving Administrative Agent's (or fonde de pourvoir's, as the case may be) Lien).

1.30 "**Canadian Borrowing Base Certificate**" shall mean an Officers' Certificate from Canadian Borrowers substantially in the form of, and containing the information prescribed by, Exhibit G-2, delivered to the Revolving Administrative Agent.

1.31 "**Canadian Collateral Agent**" shall mean Fleet Capital Global Finance Inc, its sucessor and assigns.

1.32 "**Canadian Dollar Equivalent**" shall mean at any time (a) as to any amount denominated in Canadian Dollars, the amount thereof and (b) as to any amount denominated in US Dollars or any other currency, the equivalent amount in Canadian Dollars calculated by Revolving Administrative Agent at such time using the then applicable Exchange Rate in effect on the Business Day of determination.

1.33 "**Canadian Dollar Loans**" shall mean any Loans or portion thereof which are denominated in Canadian Dollars.

1.34 "**Canadian Dollars**" and "**C$**" shall each mean the lawful currency of Canada.

1.35 "**Canadian Lender**" shall mean Fleet Capital Global Finance Inc. and its successors and assigns.

1.36 "**Canadian Maximum Credit**" shall mean US$5,300,000.

1.37 "**Canadian Obligations**" shall mean any and all (a) Canadian Revolving Loans and all other obligations, liabilities and indebtedness of every kind, nature and description owing by any Canadian Borrower to any Canadian Secured Party, including principal, interest, charges,

fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under this Agreement, any cash management agreement or under the other Financing Agreements, (b) the due and punctual payment and performance of all obligations of any Canadian Borrower under each Hedging Agreement entered into with any counterparty that was an Agent or a Lender or an Affiliate of a Lender or an Affiliate of an Agent at the time such Hedging Agreement was entered into and (c) the due and punctual payment and performance of all overdraft obligations, fees, costs, charges, expenses and other obligations from time to time owing to the Canadian Secured Party or the Cash Management Bank by any Canadian Borrower under any cash management agreement, operating or deposit account or other banking product (including, but not limited to any corporate purchase cards such as the so-called "P-Card") from time to time made available to any Canadian Borrower by any Canadian Secured Party, the Cash Management Bank or any other Affiliate thereof, in each case whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of this Agreement or after the commencement of any case with respect to any Canadian Borrower under the United States Bankruptcy Code, the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada) or any similar statute (including the payment of interest and other amounts which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, and however acquired by such Canadian Secured Party.

1.38 "**Canadian Payment Account**" shall mean a US Dollar account of Canadian Lender at the Royal Bank of Canada for US Dollars agreed to by Revolving Administrative Agent and Parent and a Canadian Dollar account of Canadian Lender at the Royal Bank of Canada for Canadian Dollars agreed to by Revolving Administrative Agent and Parent or such other account of Canadian Lender as Revolving Administrative Agent may from time to time designate to Parent as the Canadian Payment Account for purposes of this Agreement and the other Financing Agreements.

1.39 "**Canadian Pension Plan**" shall mean any plan, program or arrangement (other than the Canada/Quebec Pension Plan) that is a pension plan for the purposes of any applicable pension benefits legislation or any tax laws of Canada or a Province thereof, whether or not registered under any such laws, which is maintained or contributed to by, or to which there is or may be an obligation to contribute by, any Borrower in respect of any Person's employment in Canada with such Borrower.

1.40 "**Canadian Prime Rate**" shall mean the applicable per annum rate of interest charged by Canadian Lender for commercial loans made by it in Canada in Canadian Dollars or US Dollars, as the case may be, as determined by Canadian Lender based upon various factors including its cost of funds and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans.

1.41 "**Canadian Prime Rate Loans**" shall mean any Canadian Dollar Loans or US Dollar Loans or portion thereof on which interest is payable based on the applicable Canadian Prime Rate in accordance with the terms hereof.

1.42 "**Canadian Revolving Facility**" shall mean the Canadian Revolving Loans provided to or for the benefit of a Canadian Borrower pursuant to Section 2 hereof.

1.43 "**Canadian Revolving Loans**" shall mean Revolving Loans made by Canadian Lender pursuant to Section 2.

1.44 "**Canadian Secured Parties**" shall mean, collectively, the Revolving Administrative Agent (with respect to actions taken to administer the Canadian Revolving Facility), the Canadian Lender, the Canadian Collateral Agent and any Person that was a Lender of an Affiliate of a Lender at the time that such Person entered into a Hedging Agreement with any Canadian Borrower and their successors and assigns.

1.45 "**Capital Expenditures**" shall mean with respect to any Person for any period, the sum of (i) the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are or should be included in "property, plant and equipment" or in a similar fixed asset account on its balance sheet, whether such expenditures are paid in cash or financed, and (ii) to the extent not covered by clause (i) above, the aggregate of all expenditures by such Person and its Subsidiaries during such period to acquire by purchase or otherwise the business or fixed assets of, or the Capital Stock of, any other Person; *provided* that there shall be excluded from Capital Expenditures the purchase price paid in any Permitted Acquisition; *provided*, *further*, that any Rolling Stock which is initially accounted for as a Capital Expenditure at the time of acquisition thereof but which is transferred to a third party and becomes subject to an operating lease within 60 days after the date of acquisition thereof which lease would not be required to be treated as an addition to "property, plant and equipment" or in a similar fixed asset account on a consolidated balance sheet of Parent and its Subsidiaries prepared in accordance with GAAP, shall be excluded from Capital Expenditures.

1.46 "**Capital Leases**" shall mean, as applied to any Person, any lease of (or any agreement conveying the right to use) any property (whether real, personal or mixed) by such Person as lessee which in accordance with GAAP, is required to be reflected as a liability on the balance sheet of such Person.

1.47 "**Capital Stock**" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person's capital stock, partnership interests, limited liability company interests or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock).

1.48 "**Cash Collateral Account**" shall have the meaning assigned to such term in Section 2.6(k)(i).

1.49 "**Cash Equivalents**" shall mean, at any time, (a) any evidence of Indebtedness with a maturity date of one year or less from the date of acquisition thereof issued or directly and fully guaranteed or insured by the United States of America, Canada or any agency or instrumentality thereof; *provided* that the full faith and credit of the United States of America or Canada, as applicable, is pledged in support thereof; (b) certificates of deposit or bankers' acceptances with

a maturity of ninety (90) days or less from the date of acquisition thereof of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than $250,000,000; (c) commercial paper (including variable rate demand notes) with a maturity of ninety one year or less from the date of acquisition thereof issued by a corporation (except any Credit Party or an Affiliate of any Credit Party) organized under the laws of any State of the United States of America or the District of Columbia or organized under the laws of any Province of Canada, or the federal laws applicable therein and rated at least A-1 by Standard & Poor's Ratings Service, a division of The McGraw-Hill Companies, Inc. (" **S&P**") or at least P-1 by Moody's Investors Service, Inc. ("**Moody's**"); (d) marketable direct obligations issued by any State of the United States of America or any political subdivision or public instrumentality thereof maturing within one year of the acquisition thereof and having one of the two highest ratings obtainable from either S&P or Moody's; (e) debt securities maturing within one year from the date of acquisition issued by any company organized under the laws of the United States of America, any State thereof or the District of Columbia and having a rating of at least A from S&P and A2 from Moody's; (f) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued by, or unconditionally guaranteed by, the United States or Canada or issued by any agency of those countries and backed by the full faith and credit of the respective country, in each case maturing within 90 days from the date of acquisition; *provided* that the terms of such agreements comply with the guidelines set forth in Repurchase Agreements of Depository Institutions with Securities Dealers and Others, as adopted by the Comptroller of the Currency on February 11, 1998; and (g) investments in money market funds and mutual funds which invest substantially all of their assets in securities of the types described in clauses (a) through (f) above.

1.50 "**Cash Management Bank**" shall mean Fleet National Bank and its successors and assigns.

1.51 "**Casualty Event**" shall mean any loss of title or any loss of or damage to or destruction of, or any condemnation or other taking (including by any Governmental Authority) of, any property of Parent or any of its Subsidiaries. "Casualty Event" shall include but not be limited to any taking of all or any part of any Real Property of any person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any person or any part thereof by any Governmental Authority, civil or military, or any settlement in lieu thereof.

1.52 "**Change of Control**" shall mean (a) except as may be expressly permitted under Section 9.7 hereof, the transfer (in one transaction or a series of transactions) of all or substantially all of the assets of any Credit Party to any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act); (b) except as may be expressly permitted under Section 9.7 hereof, the liquidation or dissolution of any Credit Party or the adoption of a plan by the stockholders of any Credit Party relating to the dissolution or liquidation of any Credit Party; (c) the acquisition by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), except for one or more Permitted Holders, of beneficial ownership, directly or indirectly, of fifty percent (50%) or more of the voting power of the total outstanding Voting Stock of Parent; (d) during any period of two (2) consecutive years, individuals who at the beginning of such

period constituted the Board of Directors of Parent (together with any new directors who have been appointed by any Permitted Holder, or whose nomination for election by the stockholders of Parent, as the case may be, was approved by a vote of at least sixty-six and two-thirds percent (66 2/3%) of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason (other than death or cessation of legal capacity) to constitute a majority of the Board of Directors of Parent then still in office; (e) in the case of any Credit Party other than Parent, Parent or Credit Parties that own beneficially and of record, Voting Stock of other Credit Parties on the date of this Agreement shall cease to own beneficially and of record, one hundred percent (100%) of the voting power of the total outstanding Voting Stock of each such other Credit Party or shall cease to control the appointment of the Board of Directors of each such Credit Party; (f) the failure of the Permitted Holders to own more than fifteen percent (15%) of the voting power of the total outstanding Voting Stock of Parent ; or (g) the occurrence of a change of control under any Material Indebtedness.

1.53 "**Code**" shall mean the Internal Revenue Code of 1986, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

1.54 "**Collateral**" shall mean, collectively, the Accounts Collateral, the Non-Accounts Collateral and, prior to the Discharge of Revolving Obligations, the Canadian Accounts Collateral.

1.55 "**Collateral Access Agreement**" shall mean an agreement in writing, in form and substance satisfactory to (i) the Accounts Collateral Agent, to the extent relating to Accounts Collateral and (ii) the Canadian Collateral Agent, to the extent relating to Canadian Accounts Collateral, from any lessor of premises to any Credit Party, or any other person to whom any Accounts Collateral or Canadian Accounts Collateral, as applicable, is consigned or who has custody, control or possession of any such Collateral or is otherwise the owner or operator of any premises on which any of such Collateral is located, pursuant to which such lessor, consignee or other person, *inter alia*, acknowledges the first priority security interest of such Collateral Agent in such Collateral, agrees to waive any and all claims such lessor, consignee or other person may, at any time, has against such Collateral, whether for processing, storage or otherwise, and agrees to permit such Collateral Agent access to, and the right to remain on, the premises of such lessor, consignee or other person so as to exercise such Collateral Agent's rights and remedies and otherwise deal with such Collateral and, in the case of any consignee or other person who at any time has custody, control or possession of any Collateral, acknowledges that it holds and will hold possession of such Collateral for the benefit of such Collateral Agent and agrees to follow all instructions of such Collateral Agent with respect thereto.

1.56 "**Collateral Agents**" shall mean the collective reference to the LC Facility Collateral Agent, Accounts Collateral Agent and Canadian Collateral Agent.

1.57 "**Consolidated EBITDA**" shall mean with respect to any Person for any period, the Consolidated Net Income of such Person and its Subsidiaries for such period, plus (i) without duplication, the sum of the following amounts of such Person and its Subsidiaries for such period, in each case and to the extent deducted in determining Consolidated Net Income of such

Person for such period: (A) Consolidated Interest Expense, (B) accrued income taxes for such period determined on a consolidated basis in accordance with GAAP, (C) depreciation expense determined on a consolidated basis in accordance with GAAP, (D) all costs and expenses attributable to the refinancing, repayment or redemption, as the case may be, on the Effective Date, of existing financing facilities of Parent and its Subsidiaries and the Series C Preferred Stock of Parent (including, without limitation, legal fees and expenses, prepayment or redemption premiums, any mark to market costs of derivates embedded in such Series C Preferred Stock, any cash dividends paid on the Effective Date on such Series C Preferred Stock, filing and discharge fees, accounting fees, fees of rating agencies, printing costs, appraisal fees and cash bonuses paid to employees of Parent and its Subsidiaries (to the extent such bonuses do not exceed $400,000 in the aggregate) and legal and tax advisory expenses of Parent and its Subsidiaries relating to the reorganization of Parent's Canadian Subsidiaries occurring on or about the Effective Date); *provided* that (a) Parent provides such support and documentation with respect to such costs and expenses as either Administrative Agent may reasonably request and (b) each Administrative Agent is otherwise reasonably satisfied with such costs and expenses and (E) amortization expense determined on a consolidated basis in accordance with GAAP; provided that Parent's Consolidated EBITDA for the fiscal quarters ended December 31, 2003 and March 31, 2004 shall be deemed to be $15,997,000 and $12,109,000, respectively.

1.58 "**Consolidated Indebtedness**" shall mean, as at any date of determination, the aggregate amount of all Indebtedness of Parent and its Subsidiaries, determined on a consolidated basis in accordance with GAAP and any Unreimbursed Amount.

1.59 "**Consolidated Net Income**" shall mean with respect to any Person for any period, the net income (loss) of such Person and its Subsidiaries for such period, determined on a consolidated basis and in accordance with GAAP, but excluding from the determination of Consolidated Net Income (without duplication): (a) any extraordinary gains or losses or gains or losses from dispositions of assets of such Person and Subsidiaries (other than Inventory in the ordinary course of business on ordinary business terms), and (b) any accretion expense attributable to Environmental Liabilities; *provided* that (1) such expense is non-cash and (2) such expense is determined on a consolidated basis in accordance with GAAP plus non-recurring employee severance costs in an amount not to exceed $1.2 million in any twelve month period.

1.60 "**Consolidated Interest Expense**" shall mean with respect to any Person for any period, gross interest expense of such Person and its Subsidiaries for such period determined on a consolidated basis and in accordance with GAAP (including, without limitation, interest expense paid to Affiliates of such Person and fees and interest expense in connection with the LC Facility), less, to the extent included therein, (i) gains for such period on Hedging Agreements (to the extent not included in interest income above and to the extent not deducted in the calculation of gross interest expense) plus (ii) the sum of (A) losses for such period on Hedging Agreements (to the extent not included in gross interest expense) and (B) the upfront costs or fees for such period associated with Hedging Agreements (to the extent not included in gross interest expense), in each case, determined on a consolidated basis and in accordance with GAAP; *provided* that any fronting fees accruing under Section 2.9(i) shall be excluded from the calculation of Consolidated Interest Expense.

1.61 "**Credit Facilities**" shall mean the collective reference to the LC Facility and the Revolving Facility.

1.62 "**Credit Parties**" shall mean US Credit Parties and Canadian Borrowers.

1.63 "**Credit-Linked Deposit**" shall mean, as to each LC Facility Lender, the cash deposit made by such LC Facility Lender pursuant to Section 2.6(d), as such deposit may be (1) reduced from time to time pursuant to Section 2.8(a), and (2) reduced or increased from time to time pursuant to assignments by or to such LC Facility Lender pursuant to Section 12.6. The initial amount of each LC Facility Lender's Credit-Linked Deposit is set forth on Schedule 2 or in the Assignment and Acceptance pursuant to which such LC Facility Lender shall have acquired its Credit-Linked Deposit, as applicable.

1.64 "**Credit-Linked Deposit Account**" shall mean the account established by the LC Facility Administrative Agent under its sole and exclusive control maintained at the office of CSFB at Eleven Madison Avenue, New York, New York 10010-3629, designated as the "Clean Harbors Credit-Linked Deposit Account".

1.65 "**CSFB**" shall have the meaning set forth in the preamble to this Agreement.

1.66 "**Currency Due**" shall have the meaning set forth in Section 11.7 hereof.

1.67 "**Debt Issuance**" shall mean the incurrence by Parent or any of its Subsidiaries of any Indebtedness after the Effective Date (other than as permitted by Section 9.9) or the issuance by Parent or any of its Subsidiaries of any Disqualified Capital Stock.

1.68 "**Deed of Hypothec**" shall mean, collectively, (a) the Deed of Hypothec executed or to be executed by Clean Harbors Mercier, Inc., a Quebec corporation, pursuant to which it hypothecates its Canadian Accounts Collateral in favor of the Canadian Collateral Agent pursuant to the provisions of Article 2692 of the Civil Code of Quebec, and (b) the Deed of Hypothec executed or to be executed by Clean Harbors Quebec, Inc., a Quebec corporation, pursuant to which it hypothecates its Canadian Accounts Collateral in favor of the Canadian Collateral Agent pursuant to the provisions of Article 2692 of the Civil Code of Quebec.

1.69 "**Default**" shall mean an act, condition or event which is or with notice or passage of time or both would constitute an Event of Default.

1.70 "**Default Revolving Loans**" shall have the meaning set forth in Section 10.2(j) hereof

1.71 "**Delinquent Revolving Lender**" shall have the meaning set forth in Section 13.5(c) hereof.

1.72 "**Deposit Account Control Agreement**" shall mean an agreement in writing, in form and substance satisfactory to the applicable Collateral Agent, by and among such Collateral Agent, a Credit Party, and any bank at which any Deposit Account of such Credit Party is at any time maintained which provides that such bank will comply with instructions originated by such

Collateral Agent directing disposition of the funds in the Deposit Account without further consent by such Credit Party and such other terms and conditions as such Collateral Agent may require; *provided* that each Deposit Account Control Agreement with respect to any Blocked Account shall provide that all items received or deposited in any Blocked Accounts are the property of Revolving Administrative Agent, that the bank has no Lien upon, or right to setoff against, the Blocked Accounts, the items received for deposit therein, or the funds from time to time on deposit therein and that the bank will wire, or otherwise transfer, in immediately available funds, on a daily basis to the Revolving Agent Payment Account (in the case of the US Credit Parties) and to the Canadian Payment Account (in the case of the Canadian Borrowers) all available funds received or deposited into the Blocked Accounts.

1.73 "**Deposit Accounts**" shall mean, collectively, with respect to any Credit Party, (i) all "deposit accounts" as such term is defined in the UCC and (ii) all cash, funds, checks, notes and Instruments from time to time on deposit an any such deposit account.

1.74 "**Discharge of Revolving Obligations**" shall mean the first date on which all of the Revolving Loan Commitments have terminated and all Revolving Obligations (other than indemnification obligations with respect to unasserted claims) have been paid in full in cash and no Revolving Letter of Credit Accommodations are outstanding.

1.75 "**Disqualified Capital Stock**" shall mean any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the first anniversary of the Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Capital Stock referred to in (a) above, in each case at any time on or prior to the first anniversary of the Maturity Date, or (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations.

1.76 "**Documentation Agent**" shall have the meaning set forth in the preamble to this Agreement.

1.77 "**Dollar Equivalent Amount**" shall have the meaning set forth in Section 6.5(b) hereof.

1.78 "**Effective Date**" shall mean June 30, 2004, or such later Business Day on which the first Loan is made or Revolving Letter of Credit Accommodation or LC Facility Letter of Credit is issued hereunder.

1.79 "**Eligible Accounts**" shall mean Accounts created by Credit Parties which are and continue to be acceptable to Revolving Administrative Agent based on the criteria set forth below. In general, Accounts shall be Eligible Accounts if:

(a) such Accounts arise from the actual and bona fide sale and delivery of Inventory by a Credit Party or rendition of services by a Credit Party in the ordinary course

of its business which transactions are completed in accordance with the terms and provisions contained in any documents related thereto;

(b) such Accounts are not unpaid more than the ninety (90) days after the date of the original invoice for them;

(c) such Accounts comply with the terms and conditions contained in Section 7.2(b) of this Agreement;

(d) such Accounts do not arise from sales on consignment, guaranteed sale, sale and return, sale on approval, or other terms under which payment by the account debtor may be conditional or contingent;

(e) the chief executive office of the account debtor with respect to such Accounts is located in the United States of America, Puerto Rico or Canada (*provided* that, at any time promptly upon Revolving Administrative Agent's request, Credit Parties shall execute and deliver, or cause to be executed and delivered, such other agreements, documents and instruments as may be required by Revolving Administrative Agent to perfect the security interests of Revolving Administrative Agent in those Accounts of an account debtor with its chief executive office or principal place of business in Puerto Rico or Canada in accordance with the applicable laws of the Commonwealth of Puerto Rico or the Province of Canada in which such chief executive office or principal place of business is located and take or cause to be taken such other and further actions as Revolving Administrative Agent may request to enable Revolving Administrative Agent as secured party with respect thereto to collect such Accounts under the applicable laws of Puerto Rico or Federal or Provincial laws of Canada) or, at Revolving Administrative Agent's option, if the chief executive office and principal place of business of the account debtor with respect to such Accounts is located other than in the United States of America, Puerto Rico or Canada, then if: (i) the account debtor has delivered to Credit Parties an irrevocable letter of credit issued or confirmed by a bank satisfactory to Revolving Administrative Agent and payable only in the United States of America and in US dollars, or with respect to Accounts of Canadian Borrowers only, payable in Canada and in Canadian Dollars or US Dollars sufficient to cover such Account, in form and substance satisfactory to Revolving Administrative Agent and if required by Revolving Administrative Agent, the original of such letter of credit has been delivered to Revolving Administrative Agent or Revolving Administrative Agent's agent and Credit Parties have complied with the terms of Section 5.3(f) hereof with respect to the assignment of the proceeds of such letter of credit to Revolving Administrative Agent or naming Revolving Administrative Agent (or with respect to Accounts of Canadian Borrowers only, the Canadian Collateral Agent) as transferee beneficiary thereunder, as Revolving Administrative Agent may specify, (ii) such Account is subject to credit insurance payable to Revolving Administrative Agent or the Canadian Collateral Agent, as the case may be issued by an insurer and on terms and in an amount acceptable to Revolving Administrative Agent, or (iii) such Account is otherwise acceptable in all respects to Revolving Administrative Agent (subject to such lending formula with respect thereto as Revolving Administrative Agent may determine);

(f) such Accounts do not consist of progress billings (such that the obligation of the account debtors with respect to such Accounts is conditioned upon a Credit Party's satisfactory completion of any further performance under the agreement giving rise thereto), bill and hold invoices or retainage invoices, except as to bill and hold invoices, if Revolving Administrative Agent shall have received an agreement in writing from the account debtor, in form and substance satisfactory to Revolving Administrative Agent, confirming the unconditional obligation of the account debtor to take the goods related thereto and pay such invoice;

(g) the account debtor with respect to such Accounts has not asserted a counterclaim, defense or dispute and does not have, and does not engage in transactions which may give rise to any right of setoff or recoupment against such Accounts (but the portion of the Accounts of such account debtor in excess of the amount at any time and from time to time owed by any Credit Party to such account debtor or claimed owed by such account debtor may be deemed Eligible Accounts);

(h) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of such Accounts or reduce the amount payable or delay payment thereunder;

(i) such Accounts are subject to the first priority, valid and perfected security interest of Accounts Collateral Agent as to Accounts of US Credit Parties and first priority, valid and perfected security interest, Lien and first ranking hypothec of Canadian Collateral Agent and, to the extent applicable, in the case of the Deed of Hypothec, the Canadian Lender, as to Accounts of Canadian Borrowers and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any claims, Liens, security interest or hypothecs except those permitted in this Agreement;

(j) neither the account debtor nor any officer or employee of the account debtor with respect to such Accounts is an officer, employee, agent or other Affiliate of any Credit Party;

(k) the account debtors with respect to such Accounts are not any foreign government, the United States of America, any State, Canada, any Province, political subdivision, department, agency or instrumentality thereof, unless, upon Revolving Administrative Agent's request, if (i) the account debtor is the United States of America, any State, political subdivision, department, agency or instrumentality thereof, such Credit Party has assigned its rights to payment of such Account to Revolving Administrative Agent pursuant to and in accordance with the Federal Assignment of Claims Act of 1940, as amended, or pursuant to any similar State or local law, regulation or requirement or (ii) the account debtor is Her Majesty in right of Canada or any Canadian provincial or local governmental entity, or any ministry, such Credit Party has assigned its rights to payment of such Account to Revolving Administrative Agent pursuant to and in accordance with the Financial Administration Act, R.S.C. 185, c.F-11, as amended, or any similar applicable provincial or local law, regulation or requirement;

(l) there are no proceedings or actions which are threatened or pending against the account debtors with respect to such Accounts which might result in any material adverse change in any such account debtor's financial condition;

(m) such Accounts are not evidenced by or arising under any Instrument or Chattel Paper;

(n) such Accounts of a single account debtor or its affiliates do not constitute more than twenty percent (20%) of all otherwise Eligible Accounts (but the portion of the Accounts not in excess of such percentage may be deemed Eligible Accounts);

(o) such Accounts are not owed by an account debtor who has Accounts unpaid more than ninety (90) days after the original invoice date for them which constitute more than fifty percent (50%) of the total Accounts of such account debtor;

(p) the account debtor is not located in a state requiring the filing of a Notice of Business Activities Report or similar report in order to permit Credit Parties to seek judicial enforcement in such State of payment of such Account, unless the Credit Party doing business with such account debtor has qualified to do business in such state or has filed a Notice of Business Activities Report or equivalent report for the then current year or such failure to file and inability to seek judicial enforcement is capable of being remedied without any material delay or material cost; and

(q) such Accounts are owed by account debtors whose total indebtedness to Credit Parties does not exceed the credit limit with respect to such account debtors as determined by Credit Parties from time to time and as is reasonably acceptable to Revolving Administrative Agent (but the portion of the Accounts not in excess of such credit limit may be deemed Eligible Accounts);

provided, however, that Eligible Accounts shall be reduced by the Borrowers' deferred revenue as shown on the balance sheet of the latest financial statements of Parent and its Subsidiaries delivered pursuant to Section 9.6.

The criteria for Eligible Accounts set forth above may be changed and any new criteria for Eligible Accounts may be established only by Revolving Administrative Agent in good faith based on either: (i) an event, condition or other circumstance arising after the date hereof, or (ii) an event, condition or other circumstance existing on the date hereof to the extent Revolving Administrative Agent has no written notice thereof from Credit Parties prior to the date hereof, in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Accounts in the good faith determination of Revolving Administrative Agent. Any Accounts which are not Eligible Accounts shall nevertheless be part of the Accounts Collateral or Canadian Accounts Collateral, as applicable.

1.80 "**Eligible Assignee**" shall mean any of the following: (i) a commercial bank, insurance company, any savings and loan association or finance company or a subsidiary thereof organized under the laws of the United States, or any State thereof or the District of Columbia, and having total assets in excess of $1,000,000,000 or, in the case of the Canadian Revolving

Facility, any Canadian Affiliate thereof; (ii) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development (the "**OECD**"), or a political subdivision of any such country, and having total assets in excess of $1,000,000,000, *provided* that such bank is acting through a branch or agency located in the country in which it is organized or another country which is also a member of the OECD; (iii) the central bank of any country which is a member of the OECD; and (iv) in the case of the Revolving Facility, if and only if an Event of Default has occurred and is continuing, and in the case of the LC Facility, at any time, any other bank, insurance company, finance company or other financial institution or fund approved by the Revolving Administrative Agent in the case of assignments under the Revolving Facility or by the LC Facility Administrative Agent and the LC Facility Issuing Bank in the case of assignments under the LC Facility, in good faith.

1.81 "**Embargoed Person**" or "**Embargoed Persons**" shall have the meaning set forth in Section 9.30.

1.82 "**Environment**" shall mean ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources, the workplace or as otherwise defined in any Environmental Law.

1.83 "**Environmental Expenditures**" shall mean with respect to any Person for any period, the sum of the aggregate of all expenditures by such Person and its Subsidiaries for spending incurred with respect to remedial liabilities, including but not limited to, superfund, remediation, facility closure remediation, and discontinued operation liabilities.

1.84 "**Environmental Laws**" shall mean all current and future foreign, Federal, State, Provincial and local laws (including common law), legislation, rules, codes, licenses, permits (including any conditions imposed therein), authorizations, judicial or administrative decisions, injunctions or agreements between any Credit Party and any Governmental Authority, relating to pollution and the protection, preservation or restoration of the environment (including air, water vapor, surface water, ground water, drinking water, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, including, without limitation, those relating to the (a) exposure to, or the use, storage, recycling, treatment, generation, manufacture, processing, distribution, transportation, handling, labeling, production, release or disposal, or threatened release, of Hazardous Materials, or (b) recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials.

1.85 "**Environmental Liability**" shall mean liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

1.86 "**Equipment**" shall mean all of Credit Parties' now owned and hereafter acquired equipment, wherever located, including machinery, data processing and computer equipment and computer hardware and software, whether owned or licensed, and including embedded software, vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located.

1.87 "**Equity Issuance**" shall mean, without duplication, (i) any issuance or sale by Parent after the Effective Date of any Capital Stock in Parent (including any Capital Stock issued upon exercise of any warrant or option) or any warrants or options to purchase Capital Stock or (ii) any contribution to the capital of Parent; *provided*, *however*, that an Equity Issuance shall not include (x) any Debt Issuance or (y) any Equity Issuance by Parent of its Capital Stock (including its Capital Stock issued upon exercise of any warrant or option or warrants or options to purchase its Capital Stock but excluding Disqualified Capital Stock), in each case, to directors, officers, employees or consultants of Parent or any of its Subsidiaries.

1.88 "**ERISA**" shall mean the United States Employee Retirement Income Security Act of 1974, together with all rules, regulations and interpretations thereunder or related thereto.

1.89 "**ERISA Affiliate**" shall mean any person required to be aggregated with any Borrower or any of its Subsidiaries under Sections 414(b), 414(c), 414(m) or 414(o) of the Code.

1.90 "**ERISA Event**" shall mean (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan; (b) the adoption of any amendment to a Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA; (c) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, the failure to make by its due date a required installment under Section 412(m) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the filing pursuant to Section 412 of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the occurrence of a "prohibited transaction" with respect to which any Credit Party or any of its Subsidiaries is a "disqualified person" (within the meaning of Section 4975 of the Code) or with respect to which any Credit Party or any of its Subsidiaries could otherwise be liable; (f) a complete or partial withdrawal by any Credit Party or any ERISA Affiliate from a Multiemployer Plan or a cessation of operations which is treated as a withdrawal or notification that a Multiemployer Plan is in reorganization; (g) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the Pension Benefit Guaranty Corporation to terminate a Plan; (h) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (i) the imposition of any liability under Title IV of ERISA, other than the Pension Benefit Guaranty Corporation premiums due but not delinquent under Section 4007 of ERISA, upon any Credit Party or any ERISA Affiliate; and (j) any other event or condition with respect to a Plan including any Plan subject to Title IV of ERISA maintained, or contributed to, by any ERISA

Affiliate that could reasonably be expected to result in liability of any Credit Party in excess of $250,000.00.

1.91 "**Eurodollar Rate**" shall mean with respect to the Interest Period for a Eurodollar Rate Loan or the LIBID Rate, the rate per annum determined by the applicable Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of the relevant Interest Period by reference to the British Bankers' Association Interest Settlement Rates for deposits in Dollars (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by such Administrative Agent which has been nominated by the British Bankers' Association as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; *provided* that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "Eurodollar Rate" shall be the interest rate per annum determined by the applicable Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by such Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period.

1.92 "**Eurodollar Rate Loans**" shall mean any Loans or portion thereof on which interest is payable based on the Adjusted Eurodollar Rate in accordance with the terms hereof.

1.93 "**Event of Default**" shall mean the occurrence or existence of any event or condition described in Section 10.1 hereof.

1.94 "**Excess Availability**" shall mean:

(a) as to US Borrowers, the amount, as determined by Revolving Administrative Agent, calculated at any time, equal to the lesser of (i) the US Borrowing Base and (ii) the US Revolving Maximum Credit, minus the amount of all then outstanding US Revolving Obligations; and

(b) as to Canadian Borrowers, the Dollar Equivalent Amount, as determined by Revolving Administrative Agent, calculated at any time, equal to the lesser of (i) the Canadian Borrowing Base and (ii) the Canadian Maximum Credit, minus the sum of all then outstanding Canadian Obligations.

1.95 "**Excess Cash Flow Offer**" has the meaning assigned thereto in the Senior Secured Notes Indenture (as the Senior Secured Notes Indenture is in effect on the Issue Date).

1.96 "**Exchange Act**" shall mean the Securities Exchange Act of 1934, together with all rules, regulations and interpretations thereunder or related thereto.

1.97 "**Exchange Rate**" shall mean the prevailing spot rate of exchange of Reference Bank or such other bank as Revolving Administrative Agent may reasonably select for the purpose of conversion of one currency to another, at or around 11:00 a.m. Boston time, on the date on which any such conversion of currency is to be made under this Agreement.

1.98 "**Excluded Subsidiary**" shall mean Northeast Casualty Retention Group, Inc.

1.99 "**Excluded Taxes**" shall have the meaning set forth in Section 6.8(a) hereof.

1.100 "**Executive Orders**" shall have the meaning set forth in Section 9.30.

1.101 "**Existing Letters of Credit**" shall mean the letters of credit listed on Schedule 4.1(s) hereto.

1.102 "**FCC**" shall have the meaning set forth in the preamble to this Agreement, its successors and assigns.

1.103 "**Federal Funds Rate**" shall mean, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such a rate is not so published for any day that is a Business Day, the average (rounded upward, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the applicable Administrative Agent from three Federal funds brokers of recognized standing selected by such Administrative Agent.

1.104 "**Federal Government Account**" shall mean an Account in which the account debtor with respect to such Account is the United States of America or Canada or a department, agency or instrumentality thereof.

1.105 "**Fee Letter**" shall mean the Fee Letter dated as of June 30, 2004 by and among Parent, LC Facility Administrative Agent and Syndication Agent.

1.106 "**Financing Agreements**" shall mean, collectively, this Agreement and all notes, guarantees, security agreements, hypothecs, mortgages, deeds of trust, deeds to secure debts, deposit account control agreements, intercreditor agreements and all other agreements, documents and instruments now or at any time hereafter executed and/or delivered by any Credit Party in connection with this Agreement.

1.107 "**First Rate**" shall have the meaning set forth in Section 3.1(e) hereof.

1.108 "**Fixed Charge Coverage Ratio**" shall mean with respect to any Person for any period, the ratio of (i)(A) Consolidated EBITDA of such Person and its Subsidiaries for such period (*provided* that solely for purposes of calculating the Fixed Charge Coverage Ratio for any period ending on or prior to the one year anniversary of the Effective Date, such Consolidated EBITDA shall be increased by the Net Cash Proceeds (if any) received during such period by Borrowers from the sale of any asset listed in Schedule 1A, so long as (x) the amount of such Net Cash Proceeds shall not have otherwise been included in Consolidated EBITDA for such period and (y) the aggregate amount of all such Net Cash Proceeds added to Consolidated EBITDA do not exceed $5,000,000) *minus* (B) Capital Expenditures of such Person and its Subsidiaries for such period (except to the extent deducted from Consolidated Net Income in such period), *minus* (C) Environmental Expenditures of such Person and its Subsidiaries for such period (except to

the extent deducted from Consolidated Net Income in such period), to (ii) the sum of (A) all principal of Indebtedness for money borrowed (exclusive of any amounts paid in any Excess Cash Flow Offer made in compliance with the terms of this Agreement) of such Person and its Subsidiaries scheduled to be paid or prepaid during such period (and in the case of this Agreement, to the extent there is an equivalent permanent reduction in the Revolving Maximum Credit and Revolving Loan Commitments hereunder), *plus* (B) Consolidated Interest Expense of such Person and its Subsidiaries paid or payable in cash for such period, *plus* (C) income taxes paid or payable by such Person and its Subsidiaries during such period, *plus* (D) cash dividends or distributions paid by such Person and its Subsidiaries (other than, in the case of any Credit Party, dividends or distributions paid by such Credit Party to any other Credit Party) during such period. In determining the Fixed Charge Coverage Ratio for a particular period (w) pro forma effect will be given to: (1) the incurrence, repayment or retirement of any Indebtedness by such Person and its Subsidiaries since the first day of such period as if such Indebtedness was incurred, repaid or retired on the first day of such period and (2) the acquisition (whether by purchase, merger or otherwise) or disposition (whether by sale, merger or otherwise) of any property or assets acquired or disposed of by such Person and its Subsidiaries since the first day of such period, as if such acquisition or disposition occurred on the first day of such period; (x) interest on Indebtedness bearing a floating interest rate will be computed as if the rate at the time of computation had been the applicable rate for the entire period; and (y) the amount of Indebtedness under a revolving credit facility will be computed based upon the average daily balance of such Indebtedness during such period.

1.109 "**Foreign Subsidiary**" shall mean any Subsidiary of any Credit Party which is not organized under the laws of the United States of America or any State thereof or the District of Columbia.

1.110 "**Fund**" shall mean any person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

1.111 "**GAAP**" shall mean generally accepted accounting principles in the United States of America as in effect from time to time as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board which are applicable to the circumstances as of the date of determination consistently applied, except that, for purposes of Sections 9.17, 9.18, 9.19 and 9.20 hereof, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements delivered to the Lenders prior to the date hereof.

1.112 "**Governmental Authority**" shall mean any nation or government, any state, province, or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

1.113 "**Governmental Real Property Disclosure Requirements**" shall mean any requirement of law of any Governmental Authority requiring notification of the buyer, lessee,

mortgagee, assignee or other transferee of any Real Property, facility, establishment or business, or notification, registration or filing to or with any Governmental Authority, in connection with the sale, lease, mortgage, assignment or other transfer (including any transfer of control) of any Real Property, facility, establishment or business, of the actual or threatened presence or Release in or into the Environment, or the use, disposal or handling of Hazardous Material on, at, under or near the Real Property, facility, establishment or business to be sold, leased, mortgaged, assigned or transferred.

1.114 "**GSCP**" shall have the meaning set forth in the preamble to this Agreement.

1.115 "**Guarantors**" shall mean Clean Harbors of Baltimore, Inc. and Clean Harbors Laurel, LLC.

1.116 "**Hazardous Materials**" shall mean any pollutant, contaminant or constituent substances, chemicals, materials and wastes, including hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, radioactive materials, biological substances, polychlorinated biphenyls, pesticides, herbicides, sewage, sludge, industrial slag and solvents that can give rise to liability under or are subject to regulation under any Environmental Law.

1.117 "**Hedging Agreements**" shall mean any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including, without limitation, any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement.

1.118 "**Inactive Subsidiaries**" shall mean the Subsidiaries of the Credit Parties listed on Schedule 3.

1.119 "**Indebtedness**" shall mean, with respect to any Person, any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (except any such balance that constitutes an account payable to a trade creditor (whether or not an Affiliate) created, incurred, assumed or guaranteed by such Person in the ordinary course of business of such Person in connection with obtaining goods, materials or services that is not overdue by more than one hundred fifty (150) days, unless the trade payable is being contested in good faith); (c) all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any indebtedness described in this definition of another Person, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition; (e) all obligations with respect to redeemable stock and redemption or repurchase obligations under any Capital Stock or other equity securities

issued by such Person; (f) all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances or similar documents or instruments issued for such Person's account; and (g) all indebtedness of such Person in respect of indebtedness of another Person for borrowed money or indebtedness of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Person, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Person, all as of such time.

1.120 "**Information Memorandum**" shall mean the Confidential Information Memorandum dated as of May 2, 2004.

1.121 "**Intellectual Property**" shall mean Credit Parties' now owned and hereafter arising or acquired: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright registrations, trademarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or the license of any trademark); customer and other lists in whatever form maintained; and trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registrations; software and contract rights relating to software, in whatever form created or maintained.

1.122 "**Interest Coverage Ratio**" shall mean with respect to the Parent and its Subsidiaries (other than the Excluded Subsidiary) for any period, the ratio of (i) Consolidated EBITDA of such Person and its Subsidiaries for such period, to (ii) Consolidated Interest Expense of such Person and its Subsidiaries paid or payable in cash for such period. In determining the Interest Coverage Ratio for a particular period (a) pro forma effect will be given to: (1) the incurrence, repayment or retirement of any Indebtedness since the first day of such period as if such Indebtedness was incurred, repaid or retired on the first day of such period and (2) the acquisition (whether by purchase, merger or otherwise) or disposition (whether by sale, merger or otherwise) of any property or assets acquired or disposed of by such Person and its Subsidiaries since the first day of such period, as if such acquisition or disposition occurred on the first day of such period; (b) interest on Indebtedness bearing a floating interest rate will be computed as if the rate at the time of computation had been the applicable rate for the entire period; (c) if such Indebtedness bears, at the option of such Person and its Subsidiaries, a fixed or floating rate of interest, interest thereon will be computed by applying, at the option of such Person, either the fixed or floating rate; (d) the amount of Indebtedness under the Revolving Credit Facility will be computed based upon the average daily balance of such Indebtedness during such period and (e) for purposes of determining compliance with Section 9.18 for periods prior to June 30, 2005, Consolidated Interest for the preceding four quarters shall be deemed to be the product of (x) Consolidated Interest Expense from and after the Effective Date to and including the last day of such period multiplied by (y) a fraction of the numerator of which is 365 and the denominator of which is the number of days in such period.

1.123 "**Interest Period**" shall mean (i) for any Eurodollar Rate Loan, a period of approximately one (1), two (2), three (3) or six (6) months duration as Credit Parties may elect, the exact duration to be determined in accordance with the customary practice in the applicable Eurodollar Rate market; *provided* that Credit Parties may not elect an Interest Period which would end after the Maturity Date and (ii) for purposes of calculating the LIBID Rate, the period of approximately three months (x) initially, commencing on the Effective Date and ending on and excluding the last Business Day of September and (y) thereafter commencing on and including the last Business Day of each September, December, March and June and ending on and excluding the date on which the next succeeding Interest Period begins.

1.124 "**Interest Rate**" shall mean, as to US Prime Rate Loans, a rate equal to the US Prime Rate, as to Canadian Prime Rate Loans, a rate equal to the Canadian Prime Rate and as to Eurodollar Rate Loans, equal to the Adjusted Eurodollar Rate (based on the Eurodollar Rate applicable for the Interest Period selected by Borrowers as in effect three (3) Business Days after the date of receipt by Revolving Administrative Agent of the request of Borrowers for such Eurodollar Rate Loans in accordance with the terms hereof, whether such rate is higher or lower than any rate previously quoted to Borrowers) plus the Applicable Rate; *provided* that, notwithstanding anything to the contrary contained herein, the Interest Rate shall mean the rate of two percent (2.00%) per annum in excess of the rate then applicable as to Prime Rate Loans and the rate of two percent (2.00%) per annum in excess of the rate then applicable as to Eurodollar Rate Loans, at Revolving Administrative Agent's option (or as directed by the Majority Revolving Lenders), without notice, (a) either (i) for the period on and after the date of termination or non-renewal hereof until such time as all Obligations are indefeasibly paid and satisfied in full in immediately available funds, or (ii) for the period from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as determined by Revolving Administrative Agent and (b) on the Revolving Loans at any time outstanding in excess of the amounts available to Borrowers under Section 2 (whether or not such excess(es) arise or are made with or without Revolving Administrative Agent's knowledge or consent and whether made before or after an Event of Default).

1.125 "**Investment Property Control Agreement**" shall mean an agreement in writing, in form and substance satisfactory to the Accounts Collateral Agent, to the extent relating to a Securities Account or Commodity Account constituting Accounts Collateral, the Canadian Collateral Agent, to the extent relating to a Securities Account or a Commodity Account constituting Canadian Accounts Collateral or the LC Facility Collateral Agent, in all other cases, by and among the applicable Collateral Agent, a Credit Party and any Securities Intermediary, Commodity Intermediary or other person who has custody, control or possession of any Investment Property of such Credit Party acknowledging that such Securities Intermediary, Commodity Intermediary or other person has custody, control or possession of such Investment Property on behalf of the applicable Collateral Agent, that it will comply with entitlement orders originated by such Collateral Agent with respect to such Investment Property, or other instructions of such Collateral Agent, or (as the case may be) apply any value distributed on account of any commodity contract as directed by such Collateral Agent, in each case, without the further consent of such Credit Party and including such other terms and conditions as such Collateral Agent may require.

1.126 "**Judgment Currency**" shall have the meaning set forth in Section 11.7 hereof.

1.127 "**LC Facility**" shall mean the extensions of credit made hereunder in the form of LC Facility Letters of Credit by the LC Facility Issuing Bank.

1.128 "**LC Facility Administrative Agent**" shall have the meaning set forth in the preamble to this Agreement.

1.129 "**LC Facility Availability Period**" shall mean the period from and after the Effective Date through and excluding the earliest of (x) the fifth Business Day prior to the Maturity Date, (y) the date (if any) that the obligation of the LC Facility Issuing Bank to issue LC Facility Letters of Credit shall be terminated pursuant to Section 10.2(b) and (z) the date (if any) that the Credit-Linked Deposits are reduced to zero pursuant to Section 2.8(a).

1.130 "**LC Facility Collateral Agent**" shall mean CSFB and its successors and assigns, in their respective capacities as such.

1.131 "**LC Facility Commitment**" shall mean, with respect to each LC Facility Lender participating in the LC Facility Letters of Credit, the amount set forth on Schedule 2 hereto representing the aggregate amount such Lender has agreed to make as Credit-Linked Deposits as the same may be increased or decreased in accordance with the terms of this Agreement.

1.132 "**LC Facility Issuing Bank**" shall mean Credit Suisse First Boston, acting through its New York Branch, and any successor thereto that becomes an LC Facility Issuing Bank pursuant to Section 2.6(j).

1.133 "**LC Facility Joint Lead Arrangers**" shall have the meaning set forth in the preamble to this Agreement.

1.134 "**LC Facility Joint Lead Bookrunners**" shall mean CSFB and GSCP.

1.135 "**LC Facility LC Disbursement**" shall mean a payment or disbursement made by the LC Facility Issuing Bank pursuant to an LC Facility Letter of Credit.

1.136 "**LC Facility LC Exposure**" shall mean, at any time, the sum of (a) the aggregate undrawn amount of all LC Facility Letters of Credit outstanding at such time plus (b) the aggregate amount of all LC Facility LC Disbursements that have not yet been reimbursed by or on behalf of the US Borrowers at such time. The LC Facility LC Exposure of any LC Facility Lender at any time shall be the Pro Rata Share of such LC Facility Lender times the total LC Facility LC Exposure at such time.

1.137 "**LC Facility Lender**" shall mean any Person listed on Schedule 2 that has a commitment to make a Credit-Linked Deposit on the Effective Date and each other Person that has taken a participation in the LC Facility Letters of Credit pursuant to an Assignment and Acceptance.

1.138 "**LC Facility Letters of Credit**" shall mean any letter of credit issued pursuant to Section 2.6, which letter of credit (or similar instrument) shall have been issued (1) for the purpose of supporting (a) workers' compensation liabilities of Parent or any of its Subsidiaries, (b) the obligations of third-party insurers of Parent or any of its Subsidiaries arising by virtue of the laws of any jurisdiction requiring third-party insurers to obtain such letters of credit, (c) performance, payment, deposit or surety obligations of Parent or any of its Subsidiaries if required by law or governmental rule or regulation or in accordance with custom and practice in the industry of Credit Parties or (2) providing credit support in connection with the purchase of materials, goods or services by Parent or any of its Subsidiaries in the ordinary course of their businesses or (d) any Existing Letter of Credit.

1.139 "**LC Facility Obligations**" shall mean any and all reimbursement obligations in respect of LC Facility LC Disbursements, liabilities, fees and indebtedness of every kind, nature and description owing by any US Credit Party to any LC Facility Secured Party (in its capacity as such), including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under this Agreement or under the other Financing Agreements whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of this Agreement or after the commencement of any case with respect to any US Credit Party under the United States Bankruptcy Code or any similar statute (including the payment of interest and other amounts which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, and however acquired by such LC Facility Secured Party.

1.140 "**LC Facility Register**" shall have the meaning set forth in Section 12.8(b).

1.141 "**LC Facility Secured Parties**" shall mean the LC Facility Administrative Agent, the LC Facility Collateral Agent, the LC Facility Issuing Bank and each LC Facility Lender and their successors and assigns.

1.142 "**LC Facility Syndication Agent**" shall have the meaning set forth in the preamble to this Agreement.

1.143 "**Leases**" shall mean any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, franchise agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

1.144 "**Lenders**" shall mean, collectively, LC Facility Lenders and Revolving Lenders.

1.145 "**Letters of Credit**" shall mean, as applicable, the Revolving Letter of Credit Accommodations and/or the LC Facility Letters of Credit.

1.146 "**Leverage Ratio**" shall mean, with respect to the Parent and its Subsidiaries (other than the Excluded Subsidiary), at any time, the ratio of (i) Consolidated Indebtedness of Parent and its Subsidiaries at such time (excluding any amount set forth in clause (f) of the definition thereof except to the extent it would be required to be shown on a balance sheet prepared in accordance with GAAP); *provided* that at any time when there are no outstanding US Revolving Loans and there are less than the US Dollar Equivalent of $2.0 million of Canadian Revolving Loans outstanding, such amount shall be reduced by the lesser of (x) $20.0 million and (y) the amount of unrestricted cash and Cash Equivalents of Parent and its Subsidiaries at such time in excess of $10.0 million to (ii) the Consolidated EBITDA of Parent and its Subsidiaries for the latest four-quarter period ended prior to such time. For purposes of calculating Consolidated EBITDA for a particular period (a) pro forma effect will be given to: (1) the incurrence, repayment or retirement of any Indebtedness by Parent and its Subsidiaries since the first day of such period as if such Indebtedness was incurred, repaid or retired on the first day of such period and (2) the acquisition (whether by purchase, merger or otherwise) or disposition (whether by sale, merger or otherwise) of any property or assets acquired or disposed of by Parent and its Subsidiaries since the first day of such period, as if such acquisition or disposition occurred on the first day of such period; (b) interest on Indebtedness bearing a floating interest rate will be computed as if the rate at the time of computation had been the applicable rate for the entire period; (c) if such Indebtedness bears, at the option of Parent and its Subsidiaries, a fixed or floating rate of interest, interest thereon will be computed by applying, at the option of Parent, either the fixed or floating rate; and (d) the amount of Indebtedness under the Revolving Facility will be computed based upon the average daily balance of such Indebtedness during such period.

1.147 "**LIBID Rate**" shall mean for any Interest Period a rate equal to (A) the Eurodollar Rate for such Interest Period minus (B) 0.10% per annum.

1.148 "**Lien**" shall mean any lien, mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof and any agreement to give any security interest.

1.149 "**License Agreements**" shall have the meaning set forth in Section 8.11 hereof.

1.150 "**Loans**" shall mean the Revolving Loans.

1.151 "**Majority LC Facility Lenders**" shall mean, as of any date, LC Facility Lenders holding in the aggregate a majority or more of the aggregate LC Facility Commitments (or, at any time after the Effective Date, a majority of the Total Credit-Linked Deposits and participations in LC Facility Letters of Credit).

1.152 "**Majority Lenders**" shall mean, as of any date, the Majority LC Facility Lenders and the Majority Revolving Lenders.

1.153 "**Majority Revolving Lenders**" shall mean, as of any date, Revolving Lenders holding in the aggregate a majority or more of the aggregate Revolving Loan Commitments, participations in Revolving Letter of Credit Accommodations and Revolving Loans.

1.154 "**Material Adverse Effect**" shall mean (a) a material adverse effect on the business, property, results of operations, prospects or condition, financial or otherwise, or material agreements of Parent and its Subsidiaries, taken as a whole; (b) material impairment of the ability of the Credit Parties to fully and timely perform any of their obligations under this Agreement; (c) material impairment of the rights of or benefits or remedies available to the Lenders or the Collateral Agents under this Agreement; or (d) a material adverse effect on the Collateral or the Liens in favor of the Collateral Agents (for their benefit and for the benefit of the other Secured Parties) on the Collateral or the priority of such Liens.

1.155 "**Material Contract**" shall mean (a) any contract or other agreement (other than the Financing Agreements), written or oral, of any Credit Party involving monetary liability of or to any Person in an amount in excess of $2,500,000 in any fiscal year and (b) any other contract or other agreement (other than the Financing Agreements), whether written or oral, to which any Credit Party is a party as to which the breach, non-performance, cancellation or failure to renew by any party thereto would have a Material Adverse Effect on the business, assets, condition (financial or otherwise) or results of operations or prospects of any Credit Party or the validity or enforceability of this Agreement, any of the other Financing Agreements, or any of the rights and remedies of Agents or Lenders hereunder or thereunder.

1.156 "**Maturity Date**" shall mean the date that is the fifth anniversary of the Effective Date (*provided* that if such date is not a Business Day, the Maturity Date shall be the Business Day immediately preceding such date).

1.157 "**Material Indebtedness**" shall mean any Indebtedness of Parent or any Subsidiary of Parent under (i) under any instrument (other than Indebtedness incurred under this Agreement) or (ii) Hedging Agreements in an aggregate outstanding principal amount exceeding $30.0 million. For purposes of determining Material Indebtedness, the "principal amount" in respect of any Hedging Agreements of any Person at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if the such Hedging Agreement were terminated at such time.

1.158 "**Maximum Drawing Amount**" shall mean the maximum aggregate amount that the beneficiary may at any time draw under an outstanding Letter of Credit, as such aggregate amount may be reduced from time to time pursuant to the terms of such Letter of Credit.

1.159 "**Mortgage**" shall mean a mortgage, deed of trust, assignment of leases and rents, security agreement and fixture filing or leasehold mortgage or other security document granting a Lien on any Mortgaged Property to secure the LC Facility Obligations, including any amendment thereto. Each Mortgage shall be substantially in the form of Exhibit F or otherwise satisfactory in form and substance to the LC Facility Collateral Agent.

1.160 "**Mortgaged Property**" shall mean, initially, each parcel of Real Property identified as Mortgaged Property on Schedule 4.1(k), and each other parcel of Real Property with respect to which a Mortgage is subsequently granted pursuant to Section 9.24, 9.26 or 9.27.

1.161 "**Movable Hypothec**" shall mean, collectively, (a) the Movable Hypothec executed or to be executed by Clean Harbors Mercier, Inc., a Quebec corporation, pursuant to which

it pledges the bond issued or to be issued under the Deed of Hypothec executed or to be executed by it in favor of the Canadian Collateral Agent, and (b) the Movable Hypothec executed or to be executed by Clean Harbors Quebec, Inc., a Quebec corporation, pursuant to which it pledges the bond issued or to be issued under the Deed of Hypothec executed or to be executed by it in favor of the Canadian Collateral Agent.

1.162 "**Multiemployer Plan**" shall mean a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA which is or was at any time during the current year or the immediately preceding six (6) years contributed to by any Credit Party or any ERISA Affiliate.

1.163 "**Municipal Government Account**" shall mean an Account in which the account debtor with respect to such Account is a state, province or a political subdivision, department, agency or instrumentality thereof.

1.164 "**Net Amount of Eligible Accounts**" shall mean the gross amount of Eligible Accounts less (a) sales, excise or similar taxes included in the amount thereof, and (b) returns, rebates, discounts, claims, credits and allowances of any nature at any time issued, owing, granted, outstanding, available or claimed with respect thereto.

1.165 "**Net Amount of Federal Government Accounts**" shall mean the gross amount of Federal Government Accounts less (a) sales, excise or similar taxes included in the amount thereof, and (b) returns, rebates, discounts (which may, at the Revolving Administrative Agent's option, be calculated on the shortest term), claims, credits and allowances of any nature at any time issued, owing, granted, outstanding, available or claimed with respect thereto.

1.166 "**Net Cash Proceeds**" shall mean:

(a) with respect to any Asset Sale (other than any issuance or sale of Capital Stock), the cash proceeds received by Parent or any of its Subsidiaries (including cash proceeds subsequently received (as and when received by Parent or any of its Subsidiaries) in respect of non-cash consideration initially received) net of (i) selling expenses (including reasonable brokers' fees or commissions, legal, accounting and other professional and transactional fees, transfer and similar taxes and Parent's good faith estimate of income taxes paid or payable in connection with such sale); (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations associated with such Asset Sale or (y) any other liabilities retained by Parent or any of its Subsidiaries associated with the properties sold in such Asset Sale (*provided* that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); (iii) Parent's good faith estimate of payments required to be made with respect to unassumed liabilities relating to the properties sold within 180 days of such Asset Sale (*provided* that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within 180 days of such Asset Sale, such cash proceeds shall constitute Net Cash Proceeds); and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by a Lien on the properties sold in such Asset Sale (so long as such Lien was permitted to encumber such properties under the

Financing Agreements at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties);

(b) with respect to any Debt Issuance, any Equity Issuance or any other issuance or sale of Capital Stock by Parent or any of its Subsidiaries, the cash proceeds thereof, net of customary fees, commissions, costs and other expenses incurred in connection therewith; and

(c) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received in respect thereof, net of all reasonable costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event.

1.167 "**New Lending Office**" shall have the meaning set forth in Section 6.8(e) hereof.

1.168 "**Non-Accounts Collateral**" shall mean the "Collateral" as defined in the Security Agreement and any other property of any US Credit Party which has been pledged to secure the LC Facility Obligations pursuant to any Security Document, but excluding the Accounts Collateral and the Canadian Accounts Collateral.

1.169 "**Non-U.S. Person**" shall have the meaning set forth in Section 6.8(e).

1.170 "**Notice of Business Activities Report**" shall mean filings required in Minnesota (or any other jurisdiction which adopts a statute or other requirement with respect to which any Person that obtains business from within such jurisdiction or is otherwise subject to such jurisdiction's tax law must file a "Business Activity Report" (or other applicable report) or make any other required filings in a timely manner in order to enforce its claims in such jurisdiction's courts or arising under such jurisdiction's laws); provided, that Accounts which would be Eligible Accounts but for the terms of clause (p) of the definition of Eligible Accounts shall nonetheless be deemed to be Eligible Accounts if the applicable Credit Party has filed a "Business Activity Report" (or other applicable report) with the applicable state office or is qualified to do business in such jurisdiction and, at the time the Account was created, was qualified to do business in such jurisdiction or had on file with the applicable state office a current "Business Activity Report" (or other applicable report).

1.171 "**Obligations**" shall mean the US Obligations and the Canadian Obligations.

1.172 "**OFAC**" shall have the meaning set forth in Section 8.21(b)(v).

1.173 "**Officers' Certificate**" shall mean a certificate signed on behalf of the Parent by two officers of the Parent, one of whom must be the principal executive officer, the chief financial officer or the treasurer of the Parent.

1.174 "**Opinion of Counsel**" shall mean a written opinion from legal counsel who is reasonably acceptable to the applicable Agent.

1.175 "**Order**" shall have the meaning set forth in Section 8.21(a).

1.176 "**Organizational Documents**" shall mean, with respect to any person, (i) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such person and (v) in any other case, the functional equivalent of the foregoing.

1.177 "**Other List**" shall have the meaning set forth in Section 9.30.

1.178 "**Other Taxes**" shall mean any and all present or future stamp or documentary taxes or any other exercise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any of the other Financing Agreements, and any and all interest and penalties related thereto.

1.179 "**Parent**" shall have the meaning set forth in the preamble to this Agreement.

1.180 "**Participation Fees**" shall have the meaning set forth in Section 2.9.

1.181 "**Perfection Certificate**" shall mean the Perfection Certificate of Credit Parties constituting Exhibit A-1 hereto containing material information with respect to Credit Parties, their business and assets provided by or on behalf of Credit Parties to Administrative Agents in connection with the preparation of this Agreement and the other Financing Agreements and the financing arrangements provided for herein as the same shall be supplemented from time to time by a Perfection Certificate Supplement or otherwise.

1.182 "**Perfection Certificate Supplement**" shall mean a certificate supplement in the form of Exhibit A-2 or any other form approved by Administrative Agents.

1.183 "**Permitted Acquisition**" shall mean any transaction or series of related transactions for the direct or indirect (i) acquisition of all or substantially all of the property of any person, or of any business or division of any person; (ii) acquisition of in excess of 50% of the Capital Stock of any person, and otherwise causing such person to become a Subsidiary of such person; or (iii) merger or consolidation or any other combination with any person, if each of the following conditions is met:

(a) no Default then exists or would result therefrom;

(b) such Person shall be organized or incorporated in the United States, any state thereof, the District of Columbia, Canada or any province thereof;

(c) none of Parent or any of its Subsidiaries shall, in connection with any such transaction, assume or remain liable with respect to any Indebtedness or other liability of

the related seller or the business, person or properties acquired, except to the extent permitted under Section 9.9;

(d) the person or business to be acquired shall be, or shall be engaged in, a business of the type that Borrower and the Subsidiaries are permitted to be engaged in under Section 9.15;

(e) the Board of Directors of the person to be acquired shall not have indicated publicly its opposition to the consummation of such acquisition (which opposition has not been publicly withdrawn);

(f) all transactions in connection therewith shall be consummated in accordance with all applicable laws of all applicable Governmental Authorities;

(g) at least 10 Business Days prior to the proposed date of consummation of the transaction, Borrower shall have delivered to the Agents and the Lenders an Officers' Certificate certifying that (A) such transaction complies with this definition (which shall have attached thereto reasonably detailed backup data and calculations showing such compliance), and (B) such transaction could not reasonably be expected to result in a Material Adverse Effect;

(h) the fair market value of the Acquisition Consideration (exclusive of any Acquisition Consideration consisting of Capital Stock of Parent that (x) is not Disqualified Capital Stock and (y) does not require the payment of dividends (other than in Capital Stock of Parent that is not Disqualified Capital Stock) at any time prior to the Maturity Date) for all such acquisitions does not exceed (i) $25.0 million in any twelve month period or (ii) $75.0 million in the aggregate after the Effective Date; and

(i) after giving pro forma effect to the consummation of such Permitted Acquisition, the Excess Availability shall not be less than $10.0 million.

1.184 "**Permitted Holders**" means (i) any of Alan S. McKim, his spouse, ancestors, siblings, descendants (including children or grandchildren by adoption) and the descendants of any of his siblings; (ii) in the event of the incompetence or death of any of the Persons described in clause (i), such Person's estate, executor, administrator, committee or other personal representative, in each case who at any particular date shall beneficially own or have the right to acquire, directly or indirectly, Capital Stock of Parent; (iii) any trust created for the benefit of the Persons described in clause (i) or (ii) or any trust for the benefit of any such trust; or (iv) any Person controlled by any of the Persons described in clause (i), (ii) or (iii). For purposes of this definition, "control," as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or by contract or otherwise.

1.185 "**Person**" or "**person**" shall mean any individual, sole proprietorship, partnership, corporation (including any corporation which elects subchapter S status under the Code), limited liability company, limited liability partnership, business trust, unincorporated association,

joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

1.186 "**Plan**" shall mean an employee benefit plan, as defined in Section 3(3) of ERISA, (other than a Multiemployer Plan) to which any Credit Party or any ERISA Affiliate may have liability, including any liability by reason of having been a substantial employer within the meaning of Section 4603 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

1.187 "**PPSA**" shall mean the Personal Property Security Act as in effect in the Province of Ontario, the Civil Code of Quebec as in effect in the Province of Quebec, the Personal Property Security Act as in effect in the Province of New Brunswick or any other Canadian Federal or Provincial statute pertaining to the granting, perfecting, priority or ranking of security interests, Liens, hypothecs on personal property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time. References to sections of the PPSA shall be construed to also refer to any successor sections.

1.188 "**Prime Rate Loans**" shall mean US Prime Rate Loans and Canadian Prime Rate Loans.

1.189 "**Priority Payables**" shall mean, as to any Canadian Borrower at any time, (a) the full amount of the liabilities of such Canadian Borrower at such time which (i) have a trust imposed to provide for payment or a security interest, pledge, Lien or charge ranking or capable of ranking senior to or pari passu with security interests, Liens or charges securing the Obligations on any of the Eligible Accounts of such Canadian Borrower under Federal, Provincial, State, county, district, municipal, or local law, or (ii) have a right imposed to provide for payment ranking or capable of ranking senior to or pari passu with the Obligations under local or national law, regulation or directive, including, but not limited to, claims for unremitted and/or accelerated rents, taxes, wages, withholding taxes, VAT and other amounts payable to an insolvency administrator, employee withholdings or deductions and vacation pay, workers' compensation obligations, government royalties or pension fund obligations in each case to the extent such trust, or security interest, Lien or charge has been or may be imposed.

1.190 "**Pro Rata Share**" shall mean (i) with respect to any US Revolving Lender at any time, such Revolving Lender's percentage of the US Revolving Facility or Canadian Revolving Facility, as applicable, as set forth on Schedule 1 hereto or in the Assignment and Acceptance by which such Lender took its Revolving Commitment and (ii) with respect to any LC Facility Lender at any time, the amount of such LC Facility Lender's Credit-Linked Deposit and participations in LC Facility Letters of Credit at such time expressed as a percentage of the Total Credit-Linked Deposits and participations in LC Facility Letters of Credit at such time.

1.191 "**Projected Financial Statements**" shall have the meaning set forth in 8.26.

1.192 "**Proportionate Share**" shall have the meaning set forth in Section 14.3 hereof.

1.193 "**Quebec Borrower**" shall mean any Canadian Borrower incorporated under the laws of or having its principal office in the province of Quebec.

1.194 "**Real Property**" shall mean all right, title and interest in and to any and all now owned and hereafter acquired real property of Credit Parties, including leasehold interests, together with all buildings, structures, and other improvements located thereon and all licenses, easements and appurtenances relating thereto, wherever located.

1.195 "**Receivables**" shall mean all of the following now owned or hereafter arising or acquired property of Credit Parties: (a) all Accounts; (b) all amounts at any time payable to Credit Parties in respect of the sale or other disposition by Credit Parties of any Account; (c) all interest. fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Account; (d) all payment intangibles of Credit Parties and other contract rights, Chattel Paper, Instruments, notes, and other forms of obligations owing to Credit Parties, whether from the sale and lease of Inventory, licensing of Inventory, or the rendition of services or otherwise associated with any Accounts of any Credit Party (including, without limitation, choses in action, causes of action, rights and claims against carriers and shippers, rights to indemnification. life insurance on employees of Credit Parties' and proceeds thereof, casualty or any similar types of insurance, in each case relating to Accounts Collateral or Canadian Accounts Collateral, as applicable, and any Proceeds thereof).

1.196 "**Receiver**" shall have the meaning set forth in Section 10.2(m) hereof.

1.197 "**Records**" shall mean all of Credit Parties' present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of Credit Parties with respect to the foregoing maintained with or by any other person).

1.198 "**Reference Bank**" shall mean, with respect to US Dollar Loans, Fleet National Bank, and, with respect to Canadian Dollar Loans, the Canadian Lender and their respective successors and assigns, or such other bank as Administrative Agents may from time to time designate.

1.199 "**Refinancing**" shall mean the refinancing of (i) the loan and security agreement dated as of September 6, 2002, as amended, among Parent, the other Credit Parties thereunder, Congress Financial Corporation (New England), as agent, and the lenders from time to time party thereto, (ii) the term loans and subordinated term loans under the financing agreement dates as of September 6, 2002, as amended, among Parent, the other borrowers and guarantors thereunder, Abelco Finance LLC, as agent, and the lenders from time to time party thereto, (iii) Parent's outstanding Series C Convertible Preferred Stock, and (iv) except as set forth on Schedule 9.8, the Existing Letters of Credit with the LC Facility Letters of Credit or Revolving Letter of Credit Accommodations.

1.200 "**Refunded Revolving Obligations**" shall have the meaning set forth in Section 10.2(j) hereof

1.201 "**Release**" shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the Environment.

1.202 "**Report**" shall have the meaning set forth in Section 13.13 hereof.

1.203 "**Reserves**" shall mean as of any date of determination, such amounts as Revolving Administrative Agent may from time to time establish and revise in good faith reducing the amount of Revolving Loans and Revolving Letter of Credit Accommodations which would otherwise be available to Borrowers under the lending formula(s) provided for herein: (a) to reflect events, conditions, contingencies or risks which, as determined by Revolving Administrative Agent in good faith, adversely affect, or would have a reasonable likelihood of adversely affecting, either (i) the Accounts Collateral or Canadian Accounts Collateral, or any other property which is security for the Revolving Obligations or its value, (ii) the assets, business or prospects of any Credit Party, or (iii) the security interests and other rights of the applicable Collateral Agent in the Accounts Collateral or Canadian Accounts Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect Revolving Administrative Agent's good faith belief that any collateral report or financial information furnished by or on behalf of any Credit Party to Revolving Administrative Agent is or may have been incomplete, inaccurate or misleading in any material respect; or (c) to reflect outstanding Revolving Letter of Credit Accommodations as provided in Section 2.4 hereof; or (d) in respect of any state of facts which Revolving Administrative Agent determines in good faith constitutes a Default or an Event of Default; or (e) to reflect the amounts of the Priority Payables; or (f) to reflect Revolving Administrative Agent's good faith estimate of the amount necessary to reflect changes in applicable currency exchange rates or currency exchange markets; or (g) to reflect a two percent (2%) dilution on the Accounts. To the extent Revolving Administrative Agent may revise the lending formulas used to determine any Borrowing Base or establish new criteria or revise existing criteria for Eligible Accounts so as to address any circumstances, condition, event or contingency in a manner satisfactory to Revolving Administrative Agent, Revolving Administrative Agent shall not establish a Reserve for the same purpose. The amount of any Reserve established by Revolving Administrative Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by Revolving Administrative Agent in good faith.

1.204 "**Returned Amount**" shall have the meaning set forth in Section 10.2(o).

1.205 "**Revolving Administrative Agent** " shall have the meaning set forth in the preamble to this Agreement.

1.206 "**Revolving Agent Payment Account** " shall mean an account of the Revolving Administrative Agent at Fleet National Bank or such other account as the Revolving Administrative Agent may from time to time designate to Borrowers as the Revolving Agent Payment Account for purposes of this Agreement.

1.207 "**Revolving Arranger**" shall have the meaning set forth in the preamble to this Agreement.

1.208 "**Revolving Facility**" shall mean the extensions of credit made by the Revolving Lenders in respect of the Revolving Loans and Revolving Letter of Credit Accommodations.

1.209 "**Revolving Facility Availability Period**" shall mean the period from and after the Effective Date to and excluding the earlier of (x) the Maturity Date, and (y) the date (if any) that the Revolving Administrative Agent shall determine to cease making Revolving Loans pursuant to Section 10.2.

1.210 "**Revolving LC Participant**" shall have the meaning set forth in Section 2.4(k) hereof.

1.211 "**Revolving Lenders**" shall mean, collectively, US Revolving Lenders and Canadian Lender.

1.212 "**Revolving Letter of Credit Accommodations**" shall mean, collectively, the letters of credit, merchandise purchase or other guaranties which are from time to time either: (a) issued or opened by Fleet National Bank or any other Affiliate of Revolving Administrative Agent or any Revolving Lender for the account of any Credit Party, or (b) with respect to which Revolving Administrative Agent or Revolving Lenders have agreed to indemnify the issuer or guaranteed to the issuer including, without limitation, the Reference Bank or Canadian Lender, as applicable, the performance by any Credit Party of its obligations to such issuer; sometimes being referred to herein individually as a "Revolving Letter of Credit Accommodation".

1.213 "**Revolving Loan Commitment**" shall mean, with respect to each US Revolving Lender at any time, the amount set forth on Schedule 1 hereto representing the aggregate amount such US Revolving Lender has agreed to make in US Revolving Loans and to participate in US Revolving Letter of Credit Accommodations under the US Revolving Facility hereunder and with respect to Canadian Lender, at any time, the amount set forth on Schedule 1 hereto representing the aggregate amount Canadian Lender has agreed to make in Canadian Revolving Loans under the Canadian Revolving Facility.

1.214 "**Revolving Loans**" shall mean the loans now or hereafter made by Revolving Lenders to or for the benefit of Borrowers on a revolving basis (involving advances, repayments and readvances) as set forth in Section 2.1 hereof.

1.215 "**Revolving Maximum Credit**" shall mean the amount of $30,000,000.

1.216 "**Revolving Obligations**" shall mean the Canadian Obligations and the US Revolving Obligations.

1.217 "**Revolving Register**" shall have the meaning set forth in Section 12.8(a) hereof.

1.218 "**Revolving Secured Parties**" shall mean the Canadian Secured Parties and the US Revolving Secured Parties.

1.219 "**Rolling Stock**" shall mean all trucks, trailers, tractors, service vehicles, automobiles and other registered mobile equipment.

1.220 "**Sale and Leaseback Transaction**" shall have the meaning set forth in Section 9.33 hereof.

1.221 "**SDN List**" shall have the meaning set forth in Section 9.30.

1.222 "**Secured Parties**" shall mean, collectively, the Revolving Secured Parties and the LC Facility Secured Parties.

1.223 "**Securities Act**" shall mean the Securities Act of 1933, as amended.

1.224 "**Security Agreement**" shall mean the security agreement, dated as of the Effective Date, by and among the US Credit Parties, the LC Facility Collateral Agent and U.S. Bank National Association.

1.225 "**Security Documents**" shall mean this Agreement, the Security Agreement, the Mortgages and the Perfection Certificate executed by the Credit Parties and the applicable Collateral Agent and each other security agreement or other instrument or document executed and delivered pursuant to Article V, Section 9.24, 9.26, or 9.27 to secure any of the Obligations.

1.226 "**Senior Secured Notes**" shall mean $150.0 million aggregate principal amount of 11 1/4% Senior Secured Notes issued on the Effective Date pursuant to the Senior Secured Notes Indenture.

1.227 "**Senior Secured Notes Indenture**" shall mean the indenture dated as of the Effective Date among Parent, the guarantors party thereto and U.S. Bank National Association, as Trustee.

1.228 "**Significant Subsidiary**" shall mean any Subsidiary of Parent that would be a "significant subsidiary" as defined in Regulation S-X promulgated pursuant to the Securities Act as such Regulation is in effect on the Effective Date.

1.229 "**Subject Property**" has the meaning assigned to such term in Section 9.27.

1.230 "**Subordinated Indebtedness**" shall mean Indebtedness of any Credit Party that is by its terms subordinated in right of payment to the Obligations of such Credit Party, as applicable.

1.231 "**Subsidiary**" or "**subsidiary**" shall mean, with respect to any Person, any corporation, limited liability company, limited liability partnership or other limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Capital Stock or other interests entitled to vote in the election of the board of directors of such corporation (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency), managers, trustees or other controlling persons, or an equivalent controlling

interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more subsidiaries of such Person.

1.232 "**Supplemental Collateral Agent**" and "**Supplemental Collateral Agents**" shall have the meanings assigned thereto in Section 13.1(e).

1.233 "**Survey**" shall mean a survey of any Mortgaged Property (and all improvements thereon) which is (a) (i) prepared by a surveyor or engineer licensed to perform surveys in the state where such Mortgaged Property is located, (ii) dated (or redated) not earlier than six months prior to the date of delivery thereof unless there shall have occurred within six months prior to such date of delivery any exterior construction on the site of such Mortgaged Property or any easement, right of way or other interest in the Mortgaged Property has been granted or become effective through operation of law or otherwise with respect to such Mortgaged Property which, in either case, can be depicted on a survey, in which events, as applicable, such survey shall be dated (or redated) after the completion of such construction or if such construction shall not have been completed as of such date of delivery, not earlier than 20 days prior to such date of delivery, or after the grant or effectiveness of any such easement, right of way or other interest in the Mortgaged Property, (iii) certified by the surveyor (in a manner reasonably acceptable to the LC Facility Administrative Agent) to the LC Facility Administrative Agent, the LC Facility Collateral Agent and the Title Company, (iv) complying in all respects with the minimum detail requirements of the American Land Title Association as such requirements are in effect on the date of preparation of such survey and (v) sufficient for the Title Company to remove all standard survey exceptions from the title insurance policy (or commitment) relating to such Mortgaged Property and issue the endorsements of the type required by Section 4.1(j)(iii) or (b) otherwise acceptable to the LC Facility Collateral Agent.

1.234 "**Taxes**" shall mean any and all future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority and any and all interest and penalties related thereto.

1.235 "**Title Company**" shall mean any title insurance company as shall be retained by the Credit Parties and reasonably acceptable to the Agents.

1.236 "**Title Insurance Policy**" has the meaning assigned to such term in Section 4.1(k)(iv).

1.237 "**Total Credit-Linked Deposits**" shall mean, at any time, the sum of all the LC Facility Lenders' Credit-Linked Deposits, as the same may be reduced from time to time pursuant to Section 2.8(a).

1.238 "**Transferee**" shall have the meaning set forth in Section 6.8(a) hereof.

1.239 "**UCC**" shall mean the Uniform Commercial Code as in effect in The State of New York, and any successor statute, as in effect from time to time (except that terms used herein which are defined in the Uniform Commercial Code as in effect in The State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as Lender may otherwise determine).

1.240 "**Unbilled Eligible Accounts**" shall mean Eligible Accounts (a) in respect of which invoices have not been sent to the applicable account debtors, but in respect of which applicable account debtors have received the services provided by Credit Parties and (b) which are less than 30 days from the last day of the month in which the services giving rise to such Eligible Accounts were rendered.

1.241 "**Uncovered LC Facility LC Amount**" shall mean, as of any date of determination, the amount by which the aggregate LC Facility LC Exposure exceeds ninety-five percent (95%) of the total cash and Cash Equivalents on deposit in the Cash Collateral Account.

1.242 "**Unreimbursed Amount**" shall have the meaning set forth in Section 2.6(f)(ii).

1.243 "**US Blocked Accounts**" shall have the meaning set forth in Section 6.3(a) hereof.

1.244 "**US Borrowers**" shall mean Parent, each of its Subsidiaries (other than Foreign Subsidiaries, the Guarantors, the Excluded Subsidiary and Inactive Subsidiaries) and each of their successors and assigns.

1.245 "**US Borrowing Base**" shall mean, at any time, as to US Credit Parties**,** the amount equal to (a) eighty percent (80%) of the Net Amount of Eligible Accounts of US Credit Parties (including all Municipal Government Accounts of US Credit Parties that are Eligible Accounts), plus (b) the lesser of eighty percent (80%) of the Net Amount of Federal Government Accounts of US Borrowers that are Eligible Accounts or $5,000,000, plus (c) the lesser of (x) Unbilled Eligible Accounts at such time or (y) $12,000,000 less (d) any Reserves attributable to US Credit Parties.

1.246 "**US Borrowing Base Certificate**" shall mean an Officers' Certificate from US Borrowers substantially in the form of, and containing the information prescribed by, Exhibit G-1, delivered to the Revolving Administrative Agent.

1.247 "**US Credit Parties**" shall mean the US Borrowers and the Guarantors.

1.248 "**US Dollar Equivalent**" shall mean at any time (a) as to any amount denominated in US Dollars, the amount thereof at such time, and (b) as to any amount denominated in any other currency, the equivalent amount in US Dollars calculated by Revolving Administrative Agent in good faith at such time using the Exchange Rate in effect on the Business Day of determination.

1.249 "**US Dollar Loans**" shall mean any Loans or portion thereof which are denominated in US Dollars.

1.250 "**US Dollars**", "**US$**" and "**$**" shall each mean lawful currency of the United States of America.

1.251 "**US Lenders**" shall mean, collectively, all Lenders other than Canadian Lender.

1.252 "**US Obligations**" shall mean the LC Facility Obligations and the US Revolving Obligations.

1.253 "**US Prime Rate**" shall mean the rate from time to time publicly announced by Reference Bank, or its successors, as its prime rate, whether or not such announced rate is the best rate available at such bank.

1.254 "**US Prime Rate Loans**" shall mean any US Dollar Loans or portion thereof on which interest is payable based on the US Prime Rate in accordance with the terms thereof.

1.255 "**US Revolving Facility**" shall mean the US Loans and Revolving Letter of Credit Accommodations provided to or for the benefit of US Borrowers pursuant to Section 2.1 through Section 2.4 hereof.

1.256 "**US Revolving Lenders**" shall mean, collectively, all of the Lenders listed on Schedule 1 attached hereto or any Lender that purchases an interest in any of such Lenders' interests in the Revolving Facility pursuant to any Assignment and Acceptance.

1.257 "**US Revolving Letter of Credit Accommodations**" shall have the meaning set forth in Section 2.4(a).

1.258 "**US Revolving Loans**" shall mean Revolving Loans made by US Revolving Lenders under the US Revolving Facility.

1.259 "**US Revolving Maximum Credit**" shall mean $30,000,000 less the Canadian Maximum Credit.

1.260 "**US Revolving Obligations**" shall mean any and all (a) US Revolving Loans, US Revolving Letter of Credit Accommodations and all other obligations, liabilities and indebtedness of every kind, nature and description owing by any US Credit Party to any US Revolving Secured Party in its capacity as such, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under this Agreement, any cash management agreement or under the other Financing Agreements, (b) the due and punctual payment and performance of all obligations of any US Credit Party under each Hedging Agreement entered into with any counterparty that was an Agent or a Lender or an Affiliate of a Lender or an Affiliate of an Agent at the time such Hedging Agreement was entered into and (c) the due and punctual payment and performance of all overdraft obligations, fees, costs, charges, expenses and other obligations from time to time owing to the US Revolving Secured Parties or the Cash Management Bank by any US Credit Party under any cash management agreement, operating or deposit account or other banking product (including, but not limited to any corporate purchase cards such as the so-called "P-Card") from time to time made available to any US Credit Party by any US Revolving Secured Party, the Cash Management Bank or any other Affiliate thereof, in each case whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of this Agreement or after the commencement of any case with respect to any US Credit Party under the United States Bankruptcy Code or any similar statute (including the payment of interest and other amounts which would accrue and become due but for the commencement of such case,

whether or not such amounts are allowed or allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, and however acquired by such US Revolving Secured Party.

1.261 "**US Revolving Secured Parties**" shall mean, collectively, the Revolving Administrative Agent (with respect to actions taken to administer the US Revolving Facility), the US Revolving Lenders, the Accounts Collateral Agent, any issuer of a US Revolving Letter of Credit Accommodation and any Person that was a Lender or an Affiliate of a Lender at the time that such Person entered into a Hedging Agreement with any US Credit Party, and their successors and assigns.

1.262 "**Voting Stock**" shall mean with respect to any Person, (a) one (1) or more classes of Capital Stock of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Capital Stock of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (a) of this definition.

1.263 The terms "**Chattel Paper**"; "**Commercial Tort Claims**"; "**Commodity Account**"; "**Commodity Intermediary**"; "**Document**"; "**Electronic Chattel Paper**"; "**General Intangible**"; "**Goods**"; "**Instrument**"; "**Inventory**"; "**Investment Property**"; "**Letter of Credit**"; "**Letter of Credit Rights**"; "**Proceeds**"; "**Securities Account**"; "**Securities Intermediary**" and "**Supporting Obligations**" shall have the meanings given such terms in the UCC.

SECTION 2. CREDIT FACILITIES.

2.1 Revolving Loans.

(a) Subject to and upon the terms and conditions contained herein, each of the US Revolving Lenders severally, but not jointly, agrees to, during the Revolving Facility Availability Period, make Revolving Loans to US Borrowers from time to time in amounts requested by US Borrowers up to the amount equal to the lesser of such US Revolving Lender's (i) Pro Rata Share of the US Borrowing Base or (ii) such US Revolving Lender's Revolving Loan Commitment.

(b) Subject to and upon the terms and conditions contained herein, Canadian Lender agrees to, during the Revolving Facility Availability Period, make Revolving Loans to each Canadian Borrower from time to time in amounts requested by each such Canadian Borrower up to the aggregate amount for all Canadian Borrowers equal to the lesser of (i) the Canadian Borrowing Base or (ii) the Canadian Lender's Revolving Loan Commitment.

(c) Revolving Administrative Agent may, in its discretion (and shall, upon the direction of the Majority Revolving Lenders), from time to time, upon not less than five (5) days prior notice to Parent with respect to the US Revolving Facility or Canadian Revolving Facility, as applicable, (i) reduce the lending formula with respect to Eligible Accounts to the extent that

Revolving Administrative Agent determines in good faith that: (A) the dilution with respect to the Accounts for any period (based on the ratio of (1) the aggregate amount of reductions in Accounts other than as a result of payments in cash to (2) the aggregate amount of total sales) has increased or may be reasonably anticipated to increase in any material respect above historical levels, or (B) the general creditworthiness of account debtors has declined in any material respect. The amount of any decrease in the lending formulas shall have a reasonable relationship to the event, condition or circumstance which is the basis for such decrease as determined by Revolving Administrative Agent in good faith. In determining whether to reduce the lending formula(s), Revolving Administrative Agent and Majority Revolving Lenders may consider events, conditions, contingencies or risks which are also considered in determining Eligible Accounts or in establishing Reserves.

2.2 Maximum Loans. (a) The aggregate amount of the US Revolving Loans and the US Revolving Letter of Credit Accommodations outstanding at any time shall not exceed the US Revolving Maximum Credit; (b) the aggregate amount of the Canadian Revolving Loans shall not exceed the Canadian Maximum Credit and (c) the aggregate US Dollar Equivalent of the Revolving Loans and Revolving Letter of Credit Accommodations shall not exceed the Revolving Maximum Credit. In the event that the outstanding amount of any component of the US Revolving Loans or Canadian Revolving Loans, as applicable, and US Revolving Letter of Credit Accommodations exceed the amounts available pursuant to the applicable Borrowing Base, the sublimits for US Revolving Letter of Credit Accommodations and as set forth in Section 2.4(f), or the US Revolving Maximum Credit or Canadian Maximum Credit, as applicable, such event shall not limit, waive or otherwise affect any rights of Revolving Administrative Agent and Revolving Lenders in that circumstance or on any future occasions and the applicable Borrowers shall, upon demand by Revolving Administrative Agent, which may be made at any time or from time to time, immediately repay to Revolving Administrative Agent for the benefit of the relevant Revolving Lenders the entire amount of any such excess(es) for which payment is demanded. In addition, if at any time the aggregate Dollar Equivalent of Revolving Loans and Revolving Letter of Credit Accommodations at such time plus the aggregate principal amount of the outstanding LC Facility Commitments at such time exceed the sum of (x) the aggregate amount of accounts receivable of Parent and its Subsidiaries as shown on the balance sheet of the latest financial statements delivered pursuant to Section 9.6 plus (y) $35 million, Parent shall notify the Administrative Agents thereof and immediately repay the entire amount of such excess to the Revolving Agent for the benefit of the Revolving Lenders (and, to the extent such excess is greater than the amount of then outstanding Revolving Loans, cash collateralize Revolving Letter of Credit Accommodations on terms satisfactory to the Revolving Administrative Agent).

2.3 Optional Prepayment. The Borrowers may, upon notice from the Borrowers to the Revolving Administrative Agent, at any time or from time to time voluntarily prepay the Revolving Loans in whole or in part without premium or penalty; *provided* that in the case of the Eurodollar Rate Loans the Borrowers may prepay a Eurodollar Rate Loan only upon at least three (3) Business Days prior written notice to Lender (which notice shall be irrevocable), and any such prepayment shall occur only on the last day of the Interest Period for such Eurodollar Rate Loan. The Borrowers shall pay to the Revolving Lenders, upon request of the Revolving Lenders, such amount or amounts as shall be sufficient (in the reasonable opinion of the Revolving Lenders) to compensate the Revolving Lenders for any loss, cost, or expense incurred as a

result of: (i) any payment of a Eurodollar Rate Loan on a date other than the last day of the Interest Period for such Loan; (ii) any failure by the Borrowers to borrow an Eurodollar Rate Loan on the date specified by the Borrowers' written notice; or (iii) any failure by the Borrowers to pay an Eurodollar Rate Loan on the date for payment specified in the Borrowers' written notice. Without limiting the foregoing, the Borrowers shall pay to the Revolving Lenders a "yield maintenance fee" in an amount computed as follows: the current rate for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent) with a maturity date closest to the Interest Period chosen pursuant to the Eurodollar Rate Loan as to which the prepayment is made, shall be subtracted from the Eurodollar Rate in effect at the time of prepayment. If the result is zero or a negative number, there shall be no yield maintenance fee. If the result is a positive number, then the resulting percentage shall be multiplied by the amount of the principal balance being prepaid. The resulting amount shall be divided by 360 and multiplied by the number of days remaining in the Interest Period chosen pursuant to the Eurodollar Rate Loan as to which the prepayment is made. Said amount shall be reduced to present value calculated by using the above referenced United States Treasury securities rate and the number of days remaining in the term chosen pursuant to the Eurodollar Rate Loan as to which prepayment is made. The resulting amount shall be the yield maintenance fee due to the Revolving Lender upon the prepayment of an Eurodollar Rate Loan. If by reason of an Event of Default, the Revolving Lenders elect to declare the Obligations to be immediately due and payable, then any yield maintenance fee with respect to an Eurodollar Rate Loan shall become due and payable in the same manner as though the Borrowers had exercised such right of prepayment.

2.4 Revolving Letter of Credit Accommodations .

(a) Subject to and upon the terms and conditions contained herein, at the request of US Borrowers, Revolving Administrative Agent agrees to, during the Revolving Facility Availability Period, provide or arrange for Revolving Letter of Credit Accommodations for the account of US Borrowers ("**US Revolving Letter of Credit Accommodations**") containing terms and conditions acceptable to Revolving Administrative Agent and the issuer thereof. Any payments made by Revolving Administrative Agent to any issuer thereof and/or related parties in connection with the US Revolving Letter of Credit Accommodations shall constitute additional US Revolving Loans by US Revolving Lenders to US Borrowers pursuant to this Section 2.

(b) [reserved]

(c) In addition to the customary issuing, administrative, issuance, amendment, payment, negotiation fees and other fees or expenses charged by any bank or issuer in connection with the Revolving Letter of Credit Accommodations, the applicable Borrowers shall pay to Revolving Administrative Agent for the ratable benefit of the applicable US Revolving Lenders a letter of credit fee at a rate per annum equal to the Applicable Rate on the average outstanding Maximum Drawing Amount of the US Revolving Letter of Credit Accommodations for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month, except that such US Borrowers shall pay to Revolving Administrative Agent for the ratable benefit of the US Revolving Lenders with participations in such US Revolving Letter of Credit Accommodations such letter of credit fee, at Revolving Administrative Agent's option (or at the direction of Majority Revolving Lenders or Canadian Lender, as applicable), without

notice, at a rate equal to two percent (2%) per annum above the Applicable Rate on such average outstanding Maximum Drawing Amount for: (i) the period from and after the date of termination or non-renewal of the Revolving Commitments until the Discharge of Revolving Obligations (notwithstanding entry of a judgment against any Borrower) and (ii) the period from and after the date of the occurrence of an Event of Default for so long as such Event of Default is continuing as determined by Revolving Administrative Agent. Such letter of credit fee shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed and the obligation of US Borrowers to pay such fee shall survive the termination or non-renewal of this Agreement.

(d) Each US Revolving Letter of Credit Accommodation issued, extended, amended or renewed hereunder shall, among other things, (i) provide for the payment of drafts for honor thereunder when presented in accordance with the terms thereof and when accompanied by the documents described therein, and (ii) have, in the case of (y) a standby US Revolving Letter of Credit Accommodation, an original expiry date no later than three hundred sixty five (365) days from the date of issuance and (z) a commercial or documentary US Revolving Letter of Credit Accommodation, an expiry date no later than one hundred eighty (180) days from the date of issuance, and a final expiry date no later than the date which is five (5) days prior to the Maturity Date.

(e) US Borrowers shall give Revolving Administrative Agent two (2) Business Days' prior written notice of US Borrowers' request for the issuance of a US Revolving Letter of Credit Accommodation. Such notice shall be irrevocable and shall specify the original Maximum Drawing Amount of the US Revolving Letter of Credit Accommodation requested, the effective date (which date shall be a Business Day) of issuance of such requested US Revolving Letter of Credit Accommodation, whether such US Revolving Letter of Credit Accommodation may be drawn in a single or in partial draws, the date on which such requested US Revolving Letter of Credit Accommodation is to expire (which date shall be a Business Day), the purpose for which such US Revolving Letter of Credit Accommodation is to be issued, and the beneficiary of the requested US Revolving Letter of Credit Accommodation. US Borrowers shall attach to such notice the proposed form of the US Revolving Letter of Credit Accommodation.

(f) In addition to being subject to the satisfaction of the applicable conditions precedent contained in Section 4 hereof and the other terms and conditions contained herein, no US Revolving Letter of Credit Accommodations shall be available unless each of the following conditions precedent have been satisfied in a manner satisfactory to Revolving Administrative Agent: (i) US Borrowers shall have delivered to the proposed issuer of such US Revolving Letter of Credit Accommodation at such times and in such manner as such proposed issuer may require, an application in form and substance satisfactory to such proposed issuer and Revolving Administrative Agent for the issuance of the US Revolving Letter of Credit Accommodation and such other documents as may be required pursuant to the terms thereof, and the form and terms of the proposed US Revolving Letter of Credit Accommodation shall be satisfactory to Revolving Administrative Agent and such proposed issuer, (ii) as of the date of issuance, no order of any court, arbitrator or other Governmental Authority shall purport by its terms to enjoin or restrain money center banks generally from issuing letters of credit of the type and in the amount

of the proposed US Revolving Letter of Credit Accommodation, and no law, rule or regulation applicable to money center banks generally and no request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over money center banks generally shall prohibit, or request that the proposed issuer of such US Revolving Letter of Credit Accommodation refrain from, the issuance of letters of credit generally or the issuance of such US Revolving Letter of Credit Accommodations; and (iii) the applicable Excess Availability, prior to giving effect to any Reserves with respect to such US Revolving Letter of Credit Accommodations, on the date of the proposed issuance of any US Revolving Letter of Credit Accommodations, shall be equal to or greater than an amount equal to one hundred percent (100%) of the Maximum Drawing Amount thereof and all other commitments and obligations made or incurred by Revolving Administrative Agent with respect thereto. Effective on the issuance of each US Revolving Letter of Credit Accommodation, a Reserve shall be established in the amount set forth in this Section 2.4(f).

(g) Except in Revolving Administrative Agent's and Majority Revolving Lenders' discretion, the aggregate Maximum Drawing Amount of all outstanding US Revolving Letter of Credit Accommodations and all other commitments and obligations made or incurred by Revolving Administrative Agent, the US Revolving Lenders or any issuer of US Revolving Letter of Credit Accommodations in connection therewith shall not at any time exceed $10,000,000.

(h) Each US Borrower shall indemnify and hold Revolving Administrative Agent and each US Revolving Lender harmless from and against any and all losses, claims, damages, liabilities, costs and expenses which Revolving Administrative Agent, any US Revolving Lender may suffer or incur in connection with any US Revolving Letter of Credit Accommodations and any documents, drafts or acceptances relating thereto, including any losses, claims, damages, liabilities, costs and expenses due to any action taken by any issuer or correspondent with respect to any US Revolving Letter of Credit Accommodation. Each US Borrower assumes all risks with respect to the acts or omissions of the drawer under or beneficiary of any US Revolving Letter of Credit Accommodation and for such purposes the drawer or beneficiary shall be deemed such US Borrower's Revolving Administrative Agent. Each US Borrower assumes all risks for, and agrees to pay, all foreign, Federal, State, Provincial and local taxes, duties and levies relating to any goods subject to any US Revolving Letter of Credit Accommodations or any documents, drafts or acceptances thereunder. Each US Borrower hereby releases and holds Revolving Administrative Agent and each US Revolving Lender harmless from and against any acts, waivers, errors, delays or omissions, whether caused by any US Borrower, by any issuer or correspondent or otherwise with respect to or relating to any US Revolving Letter of Credit Accommodation, except for the gross negligence or willful misconduct of Revolving Administrative Agent as determined pursuant to a final, non-appealable order of a court of competent jurisdiction. The provisions of this Section 2.4 shall survive the Discharge of Revolving Obligations and the termination or non-renewal of this Agreement.

(i) Each US Borrower hereby irrevocably authorizes and directs any issuer of a US Revolving Letter of Credit Accommodation to name any of the US Borrowers as the account party therein and to deliver to Revolving Administrative Agent all instruments, documents and other writings and property received by issuer pursuant to the US Revolving Letter of Credit

Accommodations and to accept and rely upon Revolving Administrative Agent's instructions and agreements with respect to all matters arising in connection with the US Revolving Letter of Credit Accommodations or the applications therefor. Nothing contained herein shall be deemed or construed to grant any US Borrower any right or authority to pledge the credit of Revolving Administrative Agent or any US Revolving Lender in any manner. The Revolving Administrative Agent shall not have any liability of any kind with respect to any US Revolving Letter of Credit Accommodation provided by an issuer other than Revolving Administrative Agent unless Revolving Administrative Agent has duly executed and delivered to such issuer the application or a guarantee or indemnification in writing with respect to such US Revolving Letter of Credit Accommodation. US Borrowers shall be bound by any interpretation made in good faith by Revolving Administrative Agent or any other issuer or correspondent under or in connection with any US Revolving Letter of Credit Accommodation or any documents, drafts or acceptances thereunder, notwithstanding that such interpretation may be inconsistent with any instructions of US Borrowers. Revolving Administrative Agent shall have the sole and exclusive right and authority to, and US Borrowers shall not: (i) at any time an Event of Default exists or has occurred and is continuing, (A) approve or resolve any questions of non-compliance of documents, (B) give any instructions as to acceptance or rejection of any documents or goods, or (C) execute any and all applications for steamship or airway guaranties, indemnities or delivery orders; and (ii) at all times, (A) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents, and (B) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, US Revolving Letter of Credit Accommodations, or documents, drafts or acceptances thereunder or any letters of credit included in the Accounts Collateral. Revolving Administrative Agent may take such actions either in its own name or in any US Borrower's name.

(j) Any rights, remedies, duties or obligations granted or undertaken by US Borrowers to any issuer or correspondent in any application for any US Revolving Letter of Credit Accommodation, or any other agreement in favor of any issuer or correspondent relating to any US Revolving Letter of Credit Accommodation, shall be deemed to have been granted or undertaken by US Borrowers to Revolving Administrative Agent. Any duties or obligations undertaken by Revolving Administrative Agent to any issuer or correspondent in any application for any US Revolving Letter of Credit Accommodation, or any other agreement by Revolving Administrative Agent in favor of any issuer or correspondent relating to any US Revolving Letter of Credit Accommodation, shall be deemed to have been undertaken by US Borrowers to Revolving Administrative Agent and to apply in all respects to US Borrowers.

(k) To induce Revolving Administrative Agent to issue or cause to be issued US Revolving Letter of Credit Accommodations, each US Revolving Lender (a "**Revolving LC Participant**") irrevocably agrees to accept and purchase and hereby accepts and purchases, on the terms and conditions hereinafter stated, for such Revolving LC Participant's own account and risk, an undivided interest and participation equal to such Revolving LC Participant's Pro Rata Share in the Revolving Administrative Agent's obligations and rights under each US Revolving Letter of Credit Accommodation. Each Revolving LC Participant unconditionally and irrevocably agrees with the Revolving Administrative Agent, that it shall be directly and unconditionally obligated to the Revolving Administrative Agent to reimburse the Revolving Administrative Agent upon demand and without setoff or deduction of any kind or nature, for making any

payment under any US Revolving Letter of Credit Accommodation, in an amount equal to such Revolving LC Participant's Pro Rata Share multiplied by the amount of such payment made by the Revolving Administrative Agent, as applicable, under such Revolving Letter of Credit Accommodation. If any amount required to be paid by any Revolving LC Participant to the Revolving Administrative Agent pursuant hereto in respect of any payment made by the Revolving Administrative Agent under any US Revolving Letter of Credit Accommodation is not paid to Revolving Administrative Agent on the date such payment is due from such Revolving LC Participant, such Revolving LC Participant shall pay to the Revolving Administrative Agent, on demand an amount equal to the product of (i) such amount, times (ii) (A) the Federal Funds Rate during the period from and including the date such payment is required to and including the third day after such payment is required and (B) thereafter, the Interest Rate applicable to Prime Rate Loans to the date on which such payment is immediately available to the Revolving Administrative Agent, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. A certificate of the Revolving Administrative Agent, as applicable, submitted to any Revolving LC Participant with respect to any amounts owing under this subsection shall be conclusive in the absence of manifest error. Whenever, at any time after the Revolving Administrative Agent, as applicable, has made payment under any US Revolving Letter of Credit Accommodation and has received from any Revolving LC Participant its pro rata share of such payment in accordance herewith, and the Revolving Administrative Agent receives any payment from the Borrowers on account of such payment under such US Revolving Letter of Credit Accommodation (whether directly from the Borrowers or otherwise, including by way of set-off or proceeds of collateral applied thereto by the Revolving Administrative Agent), or any payment of interest on account thereof, the Revolving Administrative Agent shall distribute to such Revolving LC Participant its pro rata share thereof; *provided*, *however*, that in the event that any such payment received by the Revolving Administrative Agent shall be required to be returned by the Revolving Administrative Agent, such Revolving LC Participant shall return to the Revolving Administrative Agent the portion thereof previously distributed by the Revolving Administrative Agent to it. The obligations of each Revolving LC Participant to make payments to the Revolving Administrative Agent with respect to its participation in any US Revolving Letter of Credit Accommodation shall be absolute and unconditional under any and all circumstances and irrespective of any set-off, counterclaim or defense to payment which any Lender or any Borrower may have or have had against the Revolving Administrative Agent, the issuing bank or any beneficiary of a US Revolving Letter of Credit Accommodation.

2.5 Borrower Representative. Each Credit Party hereby irrevocably designates Parent as its representative and agent on its behalf (the " **Borrower Representative**") for the purpose of (i) requesting on such Borrower's behalf borrowings of US Revolving Loans or Canadian Revolving Loans, as applicable, (ii) the continuation and/or conversion of US Revolving Loans or Canadian Revolving Loans, as applicable, (iii) giving instructions with respect to the disbursement of the proceeds of US Revolving Loans or Canadian Revolving Loans, as applicable, to be made to US Borrowers or Canadian Borrowers, as applicable, (iv) selecting interest rate options for US Borrowers or Canadian Borrowers, as applicable, (v) requesting US Revolving Letter of Credit Accommodations or LC Facility Letters of Credit, as applicable, for the account of US Borrowers or Canadian Borrowers, as applicable, and (vi) giving and receiving on Credit Parties' behalf all other notices and consents hereunder or under any of the other Financing Agreements and taking all other actions (including in respect of compliance with covenants)

on behalf of Borrowers under the Financing Agreements. The Borrower Representative hereby accepts such appointment. Each Agent and each Lender may regard any notice or other communication pursuant to any Financing Agreement from the Borrower Representative as a notice or communication from the applicable Borrowers, and may give any notice or communication required or permitted to be given to any Credit Party or Credit Parties hereunder to the Borrower Representative on behalf of such Credit Party or Credit Parties. Each Credit Party agrees that each notice, election, representation and warranty, covenant, agreement and undertaking made on its behalf by the Borrower Representative shall be deemed for all purposes to have been made by such Credit Party and shall be binding upon and enforceable against such Credit Party to the same extent as if the same had been made directly by such Credit Party. This appointment of Parent as Borrower Representative may not be terminated, rescinded or changed without the prior written consent of each Agent, *provided* that upon any Agent's request, the Credit Parties shall designate an alternative Borrower Representative satisfactory to such Agent.

2.6 LC Facility Letters of Credit.

(a) Issuance and Amendment. Subject to the terms and conditions hereof, any US Borrower may request the issuance of, and the LC Facility Issuing Bank agrees to issue, one or more LC Facility Letters of Credit, in a form reasonably acceptable to the LC Facility Issuing Bank, at any time and from time to time during the LC Facility Availability Period; *provided* that all LC Facility Letters of Credit shall expire no later than the Maturity Date. This Section 2.6 shall not be construed to impose an obligation upon the LC Facility Issuing Bank to issue any LC Facility Letter of Credit that is inconsistent with the terms and conditions of this Agreement. In order to request the issuance of an LC Facility Letter of Credit, the requesting US Borrower shall hand deliver or telecopy to the LC Facility Issuing Bank and the LC Facility Administrative Agent (reasonably in advance of the requested date of issuance) a notice requesting the issuance of an LC Facility Letter of Credit and setting forth the date of issuance, the date on which such LC Facility Letter of Credit is to expire (which shall comply with paragraph (c) below), the amount of such LC Facility Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare such LC Facility Letter of Credit. If requested by the LC Facility Issuing Bank, the applicable US Borrower shall submit a letter of credit application on the LC Facility's Issuing Bank's standard form in connection with the issuance of any LC Facility Letter of Credit to be issued by the LC Facility Issuing Bank. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by any US Borrower to, or entered into by such US Borrower with, the LC Facility Issuing Bank relating to any LC Facility Letter of Credit, the terms and conditions of this Agreement shall control. Any LC Facility Letter of Credit may be amended by the LC Facility Issuing Bank at the request of such US Borrower; *provided* that no such amendment shall increase the stated amount of an LC Facility Letter of Credit or extend the expiration date thereof beyond the last permissible date referred to in paragraph (c) below. To request an amendment to an outstanding LC Facility Letter of Credit, the applicable US Borrower shall hand deliver or telecopy to the LC Facility Issuing Bank and the LC Facility Administrative Agent (reasonably in advance of the requested date of amendment) a notice identifying the LC Facility Letter of Credit to be amended and specifying the date of amendment (which shall be a Business Day), the amount of such LC Facility Letter of Credit, the name and address of the beneficiary thereof and such other information as shall

be necessary to amend such LC Facility Letter of Credit. All LC Facility Letters of Credit under this Agreement shall be conclusively presumed to have been made to, and at the request of and for the benefit of, US Borrowers when established.

(b) Limitation of Amount; No Default. An LC Facility Letter of Credit shall be issued, amended or extended only if (and upon issuance, amendment or extension of each LC Facility Letter of Credit, the US Borrower requesting such LC Facility Letter of Credit shall be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension, (1) no Default or Event of Default has occurred and is then continuing and (2) the LC Facility LC Exposure, after giving effect thereto, will not exceed the Total Credit-Linked Deposits at such time.

(c) Expiration Date. Each LC Facility Letter of Credit shall expire at or prior to the close of business on the earlier of (A) the date one year after the date of the issuance of such LC Facility Letter of Credit or, in the case of any renewal or extension thereof, one year after such renewal or extension; *provided* that if the Borrowers and the LC Facility Issuing Bank so agree, any LC Facility Letter of Credit may provide for the automatic renewal of such LC Facility Letter of Credit for successive one year terms and (B) the date that is five Business Days prior to the Maturity Date. If at any time any LC Facility Letter of Credit contains provisions providing for automatic renewal, (i) without limitation of the Borrowers' obligations under Section 9.6(b), the Borrowers will immediately upon becoming aware of any Default notify the LC Facility Administrative Agent and the LC Facility Issuing Bank of the occurrence and continuance of such Default during any period during which the LC Facility Issuing Bank has the option to provide notice of non-renewal under any LC Facility Letter of Credit and (ii) the LC Facility Lenders hereby authorize the LC Facility Issuing Bank to permit such automatic renewal, whether or not a Default then exists, unless the LC Facility Issuing Bank has received a notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days prior to the notice date to prevent automatic renewal from the LC Facility Administrative Agent and the Majority LC Facility Lenders that one or more applicable conditions is not then satisfied and directing it to give notice to prevent such automatic renewals in the future.

(d) Participations of Lenders. On the date of issuance of each LC Facility Letter of Credit, without any further action on the part of the LC Facility Issuing Bank or any LC Facility Lender, the LC Facility Issuing Bank hereby grants to each LC Facility Lender, and each LC Facility Lender hereby acquires from the LC Facility Issuing Bank, a participation in each such LC Facility Letter of Credit equal to such LC Facility Lender's Pro Rata Share of the aggregate maximum amount available to be drawn under such LC Facility Letter of Credit. The aggregate purchase price for the participations of each LC Facility Lender in all LC Facility Letters of Credit shall equal the amount of the Credit-Linked Deposit of such LC Facility Lender. Each LC Facility Lender shall deposit with the LC Facility Administrative Agent its Credit-Linked Deposit in full on the Effective Date. Except as expressly provided for herein, such deposits shall be irrevocable and no LC Facility Lender shall have any right to withdraw any of its Credit-Linked Deposit. Each LC Facility Lender hereby absolutely and unconditionally agrees that if the LC Facility Issuing Bank makes a LC Facility LC Disbursement which is not reimbursed by the US Borrowers when due as provided in (f)(i) of this Section 2.6 or is required to refund any reimbursement payment in respect of a LC Facility LC Disbursement to any US

Borrower for any reason, the LC Facility Administrative Agent shall reimburse the LC Facility Issuing Bank for such LC Facility Lender's Pro Rata Share of the amount of such LC Facility LC Disbursement from such LC Facility Lender's Credit-Linked Deposit on deposit in the Credit-Linked Deposit Account.

(e) Obligations Unconditional. Each LC Facility Lender acknowledges and agrees that its obligation to acquire and fund participations in respect of LC Facility Letters of Credit pursuant to the preceding clause (d) is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any LC Facility Letter of Credit or the occurrence and continuance of a Default or Event of Default or any return of the Credit-Linked Deposits, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Without limiting the foregoing, each LC Facility Lender irrevocably authorizes the LC Facility Administrative Agent to apply amounts of its Credit-Linked Deposit as provided in Section 2.6(d).

(f) Reimbursement. (i) If the LC Facility Issuing Bank shall make any LC Facility LC Disbursement in respect of a LC Facility Letter of Credit, the LC Facility Issuing Bank will promptly give notice to US Borrowers and the LC Facility Administrative Agent. The US Borrowers shall reimburse such LC Facility LC Disbursement by paying to the LC Facility Administrative Agent to the account specified by the LC Facility Administrative Agent an amount equal to such LC Facility LC Disbursement not later than 3:00 p.m., New York City time, on the date such LC Facility LC Disbursement is made, if US Borrowers shall have received notice of such LC Facility LC Disbursement prior to 11:00 a.m., New York City time, on the date of such LC Facility LC Disbursement, or, if such notice has not been received by US Borrowers prior to such time on the date of such LC Facility LC Disbursement, then not later than 1:00 p.m., New York City time, on the Business Day immediately following the day that US Borrowers receives such notice, in each case together with interest accrued on such LC Facility LC Disbursement from the date such LC Facility LC Disbursement is made to the date of reimbursement at the rate set forth in Section 2.6(i) below.

(ii) If the US Borrowers fail to make any payment due under subparagraph (i) of this Section 2.6(f) with respect to an LC Facility LC Disbursement, the LC Facility Administrative Agent shall notify each LC Facility Lender of the amount of the applicable unreimbursed LC Facility LC Disbursement (an "**Unreimbursed Amount**") and such LC Facility Lender's Pro Rata Share thereof, and the LC Facility Administrative Agent shall pay to the LC Facility Issuing Bank each LC Facility's Lender's Pro Rata Share of such Unreimbursed Amount from such LC Facility Lender's Credit-Linked Deposit prior to 1:00 p.m. New York City time on the Business Day immediately following the date such payment was due. Promptly following receipt by the LC Facility Administrative Agent of any payment pursuant to subparagraph (i) of this Section 2.6(f) in respect of any LC Facility LC Disbursement, the LC Facility Administrative Agent shall distribute such payment to the LC Facility Issuing Bank.

(iii) Notwithstanding the foregoing, to the extent any funds are on deposit in the Cash Collateral Account pursuant to Section 2.6(k)(i), upon receipt by the LC Facility Administrative Agent of notice of any LC Facility LC Disbursement, the LC Facility Administrative Agent shall (A) notify each LC Facility Lender of the applicable LC Facility LC Disbursement

and such LC Facility Lender's Pro Rata Share thereof, (B) promptly pay to the LC Facility Issuing Bank each LC Facility Lender's Pro Rata Share of such LC Facility LC Disbursement from such LC Facility Lender's Credit-Linked Deposit by 1:00 p.m. on the date such payment is due and (C) promptly pay to each LC Facility Lender such LC Facility Lender's Pro Rata Share of such LC Facility LC Disbursement from amounts on deposit in the Cash Collateral Account, in each case solely up to the amount then on deposit in the Cash Collateral Account pursuant to Section 2.6(k)(i).

(g) Obligations Absolute. The US Borrowers' obligation to reimburse LC Facility LC Disbursements as provided in Section 2.6(f)(i) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any LC Facility Letter of Credit or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under an LC Facility Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the LC Facility Issuing Bank under an LC Facility Letter of Credit against presentation of a draft or other document that does not comply with the terms of such LC Facility Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.6, constitute a legal or equitable discharge of, or provide a right of setoff against, the US Borrowers' obligations hereunder. None of the LC Facility Administrative Agent, the LC Facility Lenders, the LC Facility Issuing Bank or any of their Affiliates, and their respective directors, trustees, officers, employees, agents and attorneys-in-fact, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any LC Facility Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any LC Facility Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the LC Facility Issuing Bank; *provided* that the foregoing shall not be construed to excuse the LC Facility Issuing Bank from liability to the US Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the US Borrowers to the extent permitted by applicable law) suffered by the US Borrowers that are caused by the LC Facility Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under an LC Facility Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of the LC Facility Issuing Bank (as finally determined by a court of competent jurisdiction), the LC Facility Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of an LC Facility Letter of Credit, the LC Facility Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such LC Facility Letter of Credit.

(h) Disbursement Procedures. The LC Facility Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under an LC Facility Letter of Credit. The LC Facility Issuing Bank shall promptly notify the LC Facility Administrative Agent and Parent by telephone (confirmed by telecopy) of such demand for payment and whether LC Facility Issuing Bank has made or will make an LC Facility LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the US Borrowers of their obligation to reimburse the LC Facility Issuing Bank and the LC Facility Lenders with respect to any such LC Facility LC Disbursement nor the LC Facility Lenders' obligations to participate in such LC Facility Letter of Credit.

(i) Interim Interest. If the LC Facility Issuing Bank shall make any LC Facility LC Disbursement, then, unless the US Borrowers shall reimburse such LC Facility LC Disbursement in full on the date such LC Facility LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Facility LC Disbursement is made to but excluding the date that the US Borrowers reimburse such LC Facility LC Disbursement, at the LIBID rate plus 7.35% per annum. Interest accrued pursuant to this paragraph shall be paid to the account specified by the LC Facility Administrative Agent for the account of the LC Facility Issuing Bank, except that interest accrued on and after the date of payment from the Credit-Linked Deposit of any LC Facility Lender to reimburse the LC Facility Issuing Bank shall be for the account of such LC Facility Lender to the extent of such payment.

(j) Replacement of the LC Facility Issuing Bank. The LC Facility Issuing Bank may be replaced at any time by written agreement among Parent, a new LC Facility Issuing Bank and the LC Facility Administrative Agent (with notice to such replaced LC Facility Issuing Bank); *provided*, *however*, that, if the replaced LC Facility Issuing Bank so requests, any LC Facility Letters of Credit issued by such LC Facility Issuing Bank shall be replaced and cancelled prior to the removal of such LC Facility Issuing Bank and all fees and other amounts owed to such removed LC Facility Issuing Bank shall be paid to it. From and after the effective date of any such replacement, (i) the successor LC Facility Issuing Bank shall have all the rights and obligations of the LC Facility Issuing Bank under this Agreement (and its LC Facility Letters of Credit to be issued by it on such effective date or thereafter) and (ii) references herein to the term "LC Facility Issuing Bank" shall be deemed to refer to such successor or to any previous LC Facility Issuing Bank, or to such successor and all previous LC Facility Issuing Banks, as the context shall require.

(k) Cash Collateralization. (i) If (x) any Event of Default shall occur and be continuing and Parent receives (or is deemed to have received) a demand to cash collateralize the Uncovered LC Facility LC Amount pursuant to Section 10.2(b) from the LC Facility Administrative Agent or the Majority LC Facility Lenders specifying the amount of the Uncovered LC Facility LC Amount, or (y) the US Borrowers are required to cash collateralize the aggregate Uncovered LC Facility LC Amount pursuant to Section 2.8(b), then the US Borrowers shall deposit in an account (the "**Cash Collateral Account**") with the LC Facility Collateral Agent, for the benefit of the LC Facility Lenders, an amount in cash equal to the aggregate Uncovered LC Facility LC Amount on the date specified in such demand or the date specified in Section 2.8(b), as applicable.

(ii) All such deposits shall be held by the LC Facility Collateral Agent as Non-Accounts Collateral for the payment and performance of the LC Facility Obligations. The LC Facility Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the Cash Collateral Account. Other than any interest earned on the investment of such deposits in Cash Equivalents, which investments shall be made at the option and sole discretion of the LC Facility Collateral Agent, such deposits shall not bear interest; *provided*, *however*, that so long as no Event of Default shall have occurred and be continuing, the LC Facility Collateral Agent shall invest such deposits in Cash Equivalents as directed by Parent in writing and as reasonably approved by LC Facility Administrative Agent (in no event shall the LC Facility Collateral Agent be liable for the selection of Cash Equivalents or for investment losses, if any, incurred thereon, including losses incurred as a result of the liquidation of any Cash Equivalents prior to stated maturity (including, without limitation, any early withdrawal or liquidation penalty); any and all commissions, broker fees or other charges, penalties, fees or expenses incurred in connection with the investment in, or liquidation of any Cash Equivalents shall be solely for the account of the Borrowers, and shall be debited against the cash balance in the Cash Collateral Account)). Interest or profits, if any, on such investments shall accumulate in the Cash Collateral Account and be held as additional collateral for the LC Facility Obligations. Moneys in such account shall be applied in the order specified in the Security Agreement. If the US Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned, together with all earnings thereon, to Parent within three Business Days after all Events of Default if any, have been cured or waived (or at the maturity of such Cash Equivalents in the case of any such Cash Equivalents that the LC Facility Administrative Agent is unable to liquidate in the ordinary course prior to maturity). If the US Borrowers are required to provide an amount of cash collateral hereunder pursuant to Section 2.8(b), such amount (to the extent not applied as aforesaid) shall be returned to Parent, together with all earnings thereon, if any, within three (3) Business Days after the cancellation or other termination of an LC Facility Letter of Credit up to the undrawn amount of such LC Facility Letter of Credit.

(l) Reporting Requirements of LC Facility Issuing Bank. Within two (2) Business Days following the last day of each calendar month, the LC Facility Issuing Bank shall deliver to the LC Facility Administrative Agent a report detailing all activity during the preceding calendar month with respect to all LC Facility Letters of Credit issued by the LC Facility Issuing Bank, including the Maximum Drawing Amount, the account party, the beneficiary and the expiration date of each such LC Facility Letter of Credit and any other information with respect thereto as may be requested by the LC Facility Administrative Agent.

2.7 Credit-Linked Deposit Account.

(a) The Credit-Linked Deposits shall be held by the LC Facility Administrative Agent in the Credit-Linked Deposit Account, and no party other than the LC Facility Administrative Agent shall have a right of withdrawal from the Credit-Linked Deposit Account or any other right or power with respect to the Credit-Linked Deposits. Notwithstanding anything herein to the contrary, the funding obligation of each LC Facility Lender in respect of its participation in LC Facility Letters of Credit shall be satisfied in full upon the funding of its Credit-Linked Deposit.

(b) Each of the LC Facility Administrative Agent, the LC Facility Issuing Bank and each LC Facility Lender hereby acknowledges and agrees that each LC Facility Lender is funding its Credit-Linked Deposit to the LC Facility Administrative Agent for application in the manner contemplated by Section 2.6(d) and that the LC Facility Administrative Agent has agreed to invest the Credit-Linked Deposits which are on deposit in the Credit Linked Deposit Account from time to time so as to earn a return (subject to clause (e) below) for the LC Facility Lenders equal to the LIBID Rate for the applicable period. Each LC Facility Lender's Pro Rata Share of such interest will be paid to such LC Facility Lender by the LC Facility Administrative Agent in arrears on the last Business Day of each March, June, September and December and on each other day Participation Fees are paid pursuant to Section 2.9.

(c) The Borrowers shall have no right, title or interest in or to the Credit-Linked Deposits and no obligations with respect thereto, it being acknowledged and agreed by the parties hereto that the making of the Credit-Linked Deposits by the LC Facility Lenders, the provisions of this Section 2.7 and the application of the Credit-Linked Deposits in the manner contemplated by Section 2.6(d) constitute agreements among the LC Facility Administrative Agent, the LC Facility Issuing Bank and each LC Facility Lender with respect to the funding obligations of each Lender in respect of its participation in LC Facility Letters of Credit and do not constitute any loan or extension of credit to any Borrower.

(d) Subject to Section 2.8(a), each LC Facility Lender's Pro Rata Share of any amount of Credit-Linked Deposits remaining on deposit in the Credit-Linked Deposit Account will be returned to such LC Facility Lender on the first date on or after the Maturity Date on which the LC Facility LC Exposure has been reduced to zero.

(e) If, for any date of determination of the LIBID Rate the LC Facility Administrative Agent, shall have determined (which determination shall be conclusive and binding on each LC Facility Lender) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the LIBID Rate, the LC Facility Administrative Agent shall give notice thereof to the LC Facility Lenders and until such notice has been withdrawn, the Credit-Linked Deposits on deposit in the Credit Linked Deposit Account shall be invested so as to earn a return equal to the greater of the Federal Funds Rate and a rate determined by the LC Facility Administrative Agent in accordance with banking industry rules on interbank compensation.

2.8 Optional Reductions of Credit-Linked Deposits and Mandatory Cash Collateralization of Uncovered LC Facility Letters of Credit Amount .

(a) Optional Reduction. The US Borrower**s** may, at any time, direct the LC Facility Administrative Agent to reduce the Total Credit-Linked Deposits, in whole or in part, upon at least three Business Days' irrevocable written notice, to the LC Facility Administrative Agent specifying the date and amount of such reduction; *provided* that (i) if any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein; (ii) any such reduction shall be in an aggregate principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof; (iii) no such reduction shall be permitted if, after giving effect to such reduction, the LC Facility LC Exposure would exceed the Total Credit-Linked Deposits; and (iv) US Borrowers shall pay, for the pro rata benefit of each LC Facility Lender, a

premium equal to 1% of the amount of any such reduction which is made prior to June 30, 2005, which premium shall be payable at the time of such reduction. For the avoidance of doubt, the US Borrower**s** shall not direct the LC Facility Administrative Agent to reduce the Total Credit-Linked Deposits if, after giving effect to such reduction, the aggregate LC Facility LC Exposure would exceed the aggregate Total Credit-Linked Deposits. In the event the Credit-Linked Deposits shall be reduced in accordance with the foregoing, the LC Facility Administrative Agent will return all amounts in the Credit-Linked Deposit Account in excess of the reduced Credit-Linked Deposits to the Lenders, ratably in accordance with their Pro Rata Shares of the Total Credit-Linked Deposits.

(b) Mandatory Cash Collateralization.

(i) Asset Sales. Not later than one Business Day following the receipt of any Net Cash Proceeds of any Asset Sale by Parent or any of its Subsidiaries, Parent shall apply an amount equal to 100% of such Net Cash Proceeds to cash collateralize the Uncovered LC Facility Letter of Credit Amount in accordance with Section 2.6(k); *provided* that

(1) so long as no Default shall then exist or arise therefrom, no such cash collateralization shall be required with respect to (A) any Asset Sale permitted by Section 9.7, (B) the disposition of property which constitutes a Casualty Event, or (C) Asset Sales for fair market value resulting in no more than $100,000 in Net Cash Proceeds per Asset Sale (or series of related Asset Sales) and less than $1,000,000 in Net Cash Proceeds in any fiscal year; *provided* that clause (C) shall not apply in the case of any Asset Sale described in clause (b) of the definition thereof; and

(2) so long as no Default shall then exist or would arise therefrom and the aggregate of such Net Cash Proceeds of Asset Sales shall not exceed $5,000,000 in any fiscal year of Parent, such Net Cash Proceeds shall not be required to be applied pursuant to Section 2.6(k) to the extent that (A) Parent shall have delivered an Officers' Certificate to the LC Facility Administrative Agent on or prior to such date stating that such Net Cash Proceeds are expected to be reinvested in fixed or capital assets within 180 days following the date of such Asset Sale (which Officers' Certificate shall set forth the estimates of the proceeds to be so expended); and (B) if all or any portion of such Net Cash Proceeds is not so reinvested within such 180-day period, such unused portion shall be applied on the last day of such period as a mandatory prepayment as provided in this Section 2.8(b); and *provided*, *further*, that if the property subject to such Asset Sale constituted Non-Accounts Collateral, then all property purchased with the Net Cash Proceeds thereof pursuant to this subsection shall be Non-Accounts Collateral.

(ii) Debt Issuance. Not later than one Business Day following the receipt of any Net Cash Proceeds of any Debt Issuance by Parent or any of its Subsidiaries, Parent shall cash collateralize the Uncovered LC Facility Letter of Credit Amount in accordance with Section 2.6(k) in an aggregate principal amount equal to 100% of such Net Cash Proceeds.

(iii) Equity Issuance. Not later than one Business Day following the receipt of any Net Cash Proceeds of any Equity Issuance, Parent shall cash collateralize the Uncovered LC

Facility LC Amount in accordance with Section 2.6(k) in an aggregate amount equal to the Applicable Percentage of such Net Cash Proceeds.

(iv) Casualty Events. Not later than one Business Day following the receipt of any Net Cash Proceeds from a Casualty Event of Parent or any of its Subsidiaries, Parent shall cash collateralize the Uncovered LC Facility Letter of Credit Amount in accordance with Section 2.6(k) in an aggregate principal amount equal to 100% of such Net Cash Proceeds; *provided* that:

(1) so long as no Default shall then exist or arise therefrom, such proceeds shall not be required to be so applied on such date to the extent that (A) in the event such Net Cash Proceeds shall not exceed $5.0 million, Parent shall have delivered an Officers' Certificate to the LC Facility Administrative Agent on or prior to such date stating that such proceeds are expected to be used, or (B) in the event that such Net Cash Proceeds exceed $5.0 million, the LC Facility Administrative Agent has elected by notice to Parent on or prior to the date of receipt of such Net Cash Proceeds to require such Net Cash Proceeds to be used, in each case, to repair, replace or restore any property in respect of which such Net Cash Proceeds were received or to reinvest in other fixed or capital assets, no later than 180 days following the date of receipt of such Net Cash Proceeds; *provided* that if the property subject to such Casualty Event constituted Non-Accounts Collateral, then all property purchased with the Net Cash Proceeds thereof shall be Non-Accounts Collateral; and

(2) if any portion of such Net Cash Proceeds shall not be so applied within such 180-day period, such unused portion shall be applied on the last day of such period to cash collateralize the Uncovered LC Facility LC Amount.

(v) Borrowing Base. If at any time the aggregate Dollar Equivalent of Revolving Loans and Revolving Letter of Credit Accommodations at such time plus the aggregate principal amount of the outstanding LC Facility Commitments at such time exceed the sum of (x) the aggregate amount of accounts receivable of Parent and its Subsidiaries as shown on the balance sheet of the latest financial statements delivered pursuant to Section 9.6 plus (y) $35 million, Parent shall notify the Administrative Agent thereof and first, comply with the last sentence of Section 2.2 and second, to the extent any of such excess remains after application in accordance with the last sentence of Section 2.2, cash collateralize the Uncovered LC Facility Letter of Credit Amount in accordance with Section 2.6(k) in an aggregate principal amount equal to 100% of such remaining excess.

2.9 LC Facility Fees. The US Borrowers agree to pay (i) to LC Facility Administrative Agent for the account of each LC Facility Lender a participation fee (a "**Participation Fee**") with respect to its agreement to participate in LC Facility Letters of Credit, which participation fee shall accrue at the rate of 5.35% per annum, on the average daily amount of such LC Facility Lender's Credit-Linked Deposit during the period from and including the Effective Date to but excluding any date on which such Lender's Credit-Linked Deposit is returned to it, and (ii) to the LC Facility Issuing Bank a fronting fee, which shall accrue at the rate of 0.30% per annum on the average daily aggregate Maximum Drawing Amount of the outstanding LC Facility Letters of Credit of such LC Facility Issuing Bank, as well as such LC Facility Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any LC Facility Letter of

Credit or processing of drawings thereunder. Accrued Participation Fees and fronting fees shall be due and payable on the last Business Day of each March, June, September and December, commencing on the first such date to occur after the Effective Date; *provided* that all such fees shall be payable on the date on which the Credit-Linked Deposits are returned to the LC Facility Lenders and any such fees accruing after the date on which the Credit-Linked Deposits are returned to the Lenders shall be payable on demand. Any other fees payable to LC Facility Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after demand. All Participation Fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Additionally, the US Borrowers agree to pay to LC Facility Administrative Agent, for its own account, the administrative fees set forth in the Fee Letter.

All fees payable under this Section 2.9 shall be paid on the dates due, in immediately available funds, to the LC Facility Administrative Agent for the benefit of the parties entitled thereto. Fees paid shall not be refundable under any circumstances.

SECTION 3. REVOLVING FACILITY INTEREST AND FEES.

3.1 Interest.

(a) US Borrowers shall pay to Revolving Administrative Agent for the ratable benefit of US Revolving Lenders, and Canadian Borrowers shall pay to Canadian Collateral Agent for the benefit of Canadian Lender, interest on the outstanding principal amount of the applicable Revolving Loans at the applicable Interest Rate. All interest shall be payable solely in the currency in which the underlying Revolving Loan is made. All interest accruing hereunder on and after the date of any Event of Default or termination of the Revolving Loan Commitments shall be payable on demand.

(b) With respect to US Revolving Loans, Borrower Representative may from time to time request Eurodollar Rate Loans or may request that Prime Rate Loans be converted to Eurodollar Rate Loans or that any existing Eurodollar Rate Loans continue for an additional Interest Period. Such request from Borrower Representative shall be in writing on such form or forms as Revolving Administrative Agent may require and shall specify, without limitation, the amount of the Eurodollar Rate Loans or the amount of the Prime Rate Loans to be converted to Eurodollar Rate Loans or the amount of the Eurodollar Rate Loans to be continued (subject to the limits set forth below) and the Interest Period to be applicable to such Eurodollar Rate Loans. Subject to the terms and conditions contained herein, three (3) Business Days after receipt by Revolving Administrative Agent of such a request from Borrower Representative, such Prime Rate Loans shall be converted to Eurodollar Rate Loans or such Eurodollar Rate Loans shall continue, as the case may be, *provided* that (i) no Default or Event of Default shall exist or have occurred and be continuing, (ii) no party hereto shall have sent any notice of termination or non-renewal of this Agreement, (iii) Borrowers shall have complied with such customary procedures as are established by Revolving Administrative Agent and specified by Revolving Administrative Agent to Borrowers from time to time for requests by Borrowers for Eurodollar Rate Loans, (iv) no more than four (4) Interest Periods may be in effect at any one time, (v) the aggregate amount of the Eurodollar Rate Loans must be in an amount not less than $3,000,000 or an integral multiple of $1,000,000 in excess thereof, and (vi) Revolving Administrative Agent shall

have determined that the Interest Period or Adjusted Eurodollar Rate is available to Revolving Lenders and Reference Bank and can be readily determined as of the date of the request for such Eurodollar Rate Loan by Borrowers. Any request by Borrower Representative for Eurodollar Rate Loans or to convert Prime Rate Loans to Eurodollar Rate Loans or to continue any existing Eurodollar Rate Loans shall be irrevocable. Notwithstanding anything to the contrary contained herein, Lenders and Reference Bank shall not be required to purchase United States Dollar deposits in the London interbank market or other applicable Eurodollar Rate market to fund any Eurodollar Rate Loans, but the provisions hereof shall be deemed to apply as if Lenders and Reference Bank had purchased such deposits to fund the Eurodollar Rate Loans.

(c) Any Eurodollar Rate Loans shall automatically convert to US Prime Rate Loans upon the last day of the applicable Interest Period, unless Revolving Administrative Agent has received and approved a request to continue such Eurodollar Rate Loans at least three (3) Business Days prior to such last day in accordance with the terms hereof. Any Eurodollar Rate Loans shall, at Revolving Administrative Agent's option, upon notice by Revolving Administrative Agent to Borrowers, convert to US Prime Rate Loans in the case of US Dollar Loans in the event that this Agreement shall terminate or not be renewed. US Borrowers shall pay to Revolving Administrative Agent for the benefit of US Revolving Lenders upon demand by any Revolving Lender (or Revolving Administrative Agent or any such Revolving Lender may, at its option, charge any loan account of Borrower) any amounts required to compensate such Revolving Lender, the Reference Bank or any participant with any such Revolving Lender for any loss (including loss of anticipated profits), cost or expense incurred by such person, as a result of the conversion of Eurodollar Rate Loans to Prime Rate Loans pursuant to any of the foregoing.

(d) Interest shall be payable by US Borrowers to Revolving Administrative Agent for the account of US Revolving Lenders and by Canadian Borrowers to Canadian Collateral Agent for the account of Canadian Lender, monthly in arrears not later than the first day of each calendar month and shall be calculated on the basis of (i) a three hundred sixty-five (365) day year in the case of Canadian Dollar Loans and (ii) a three hundred sixty (360) day year in the case of US Dollar Loans and in each case based on actual days elapsed. The interest rate on non-contingent US Revolving Obligations (other than Eurodollar Rate Loans) shall increase or decrease by an amount equal to each increase or decrease in the Prime Rate effective on the first day of the month after any change in such Prime Rate is announced based on the Prime Rate in effect on the last day of the month in which any such change occurs. In no event shall charges constituting interest payable by Borrowers to Revolving Administrative Agent, Canadian Collateral Agent or to Revolving Lenders exceed the maximum amount or the rate permitted under any applicable law or regulation, and if any such part or provision of this Agreement is in contravention of any such law or regulation, such part or provision shall be deemed amended to conform thereto.

(e) For purposes of disclosure under the Interest Act (Canada), where interest is calculated pursuant thereto at a rate based upon a three hundred sixty (360) day year or three hundred sixty-five (365) day year (the " **First Rate**"), the rate or percentage of interest on a yearly basis is equivalent to such First Rate multiplied by the actual number of days in the year divided by three hundred sixty (360) or three hundred sixty-five (365), as applicable.

(f) Notwithstanding the provisions of this Section 3 or any other provision of this Agreement, in no event shall the aggregate "interest" (as that term is defined in Section 347 of the Criminal Code (Canada)) with respect to any Canadian Revolving Loans by or on behalf of Canadian Lender exceed the effective annual rate of interest on the "credit advanced" (as defined therein) lawfully permitted under Section 347 of the Criminal Code (Canada). The effective annual rate of interest for such purpose shall be determined in accordance with generally accepted actuarial practices and principles over the term of the applicable Canadian Revolving Loan by or on behalf of Canadian Lender, and in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Revolving Administrative Agent will be conclusive for the purposes of such determination.

(g) A certificate of an authorized signing officer of Revolving Administrative Agent as to each rate of interest payable hereunder from time to time absent manifest error shall be conclusive evidence of such rate.

(h) For greater certainty, unless otherwise specified in this Agreement or any of the other Financing Agreements, as applicable, whenever any amount is payable under this Agreement or any of the other Financing Agreements by Borrowers as interest or as a fee which requires the calculation of an amount using a percentage per annum, each party to this Agreement acknowledges and agrees that such amount shall be calculated as of the date payment is due without application of the "deemed reinvestment principle" or the "effective yield method." As an example, when interest is calculated and payable monthly, the rate of interest payable per month is one-twelfth (1/12) of the stated rate of interest per annum.

3.2 [Intentionally Omitted].

3.3 [Intentionally Omitted].

3.4 Unused Line Fee. US Borrowers shall pay to Revolving Administrative Agent for the ratable benefit of US Revolving Lenders monthly an unused line fee at a rate equal to one-eighth of one percent (0.125%) per annum calculated upon the amount by which the US Revolving Loan Commitment exceeds the average daily principal balance of the outstanding US Revolving Loans and US Revolving Letter of Credit Accommodations during the immediately preceding month (or part thereof) while this Agreement is in effect and for so long thereafter as any of the US Revolving Loan Commitments are outstanding, which fee shall be payable on the first day of each month in arrears. Canadian Borrowers shall pay to Revolving Administrative Agent for the benefit of Canadian Lender monthly an unused line fee at a rate equal to one eighth of one percent (0.125%) per annum calculated upon the amount by which the Canadian Revolving Loan Commitment exceeds the average daily principal balance of the outstanding Canadian Revolving Loans during the immediately preceding month (or part thereof) while this Agreement is in effect and for so long thereafter as any of the Canadian Revolving Loan Commitments are outstanding, which fee shall be payable on the first day of each month in arrears.

3.5 Changes in Laws and Increased Costs of Loans .

(a) Notwithstanding anything to the contrary contained herein, the Eurodollar Rate Loans made by a Revolving Lender shall, upon notice by such Revolving Lender to

Borrowers, convert to Prime Rate Loans in the event that (i) any change in applicable law or regulation (or the interpretation or administration thereof) shall (A) make it unlawful for such Revolving Lender, or any participant with such Revolving Lender or Reference Bank to make or maintain Eurodollar Rate Loans or to comply with the terms hereof in connection with the Eurodollar Rate Loans, or (B) shall result in the increase in the costs to such Revolving Lender or any participant with such Revolving Lender or Reference Bank of making or maintaining any Eurodollar Rate Loans by an amount deemed by such Revolving Lender to be material, or (C) reduce the amounts received or receivable by such Revolving Lender in respect thereof, by an amount deemed by such Revolving Lender to be material; or (ii) the cost to such Revolving Lender, or any participant with such Revolving Lender or Reference Bank of making or maintaining any Eurodollar Rate Loans shall otherwise increase by an amount deemed by such Revolving Lender to be material. Borrowers shall pay to such Revolving Lender, upon demand by such Revolving Lender (or such Revolving Lender may, at its option, charge any loan account of Borrowers) any amounts required to compensate such Revolving Lender or any participant with such Revolving Lender or Reference Bank for any loss (including loss of anticipated profits), cost or expense incurred by such person as a result of the foregoing, including, without limitation, any such loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such person to make or maintain the Eurodollar Rate Loans or any portion thereof. A certificate of such Revolving Lender setting forth the basis for the determination of such amount necessary to compensate such Revolving Lender as aforesaid shall be delivered to Borrowers and shall be conclusive, absent manifest error.

(b) If any payments or prepayments in respect of the Eurodollar Rate Loans are received by Revolving Lenders other than on the last day of the applicable Interest Period (whether pursuant to acceleration, upon maturity or otherwise), including any payments pursuant to the application of collections under Section 6.3 or any other payments made with the proceeds of Collateral, Borrowers shall pay to Revolving Lenders upon demand by Revolving Administrative Agent (or Revolving Administrative Agent or any Revolving Lender may, at their option, charge any loan account of Borrowers) any amounts required to compensate Lenders, the Reference Bank or any participant with any Revolving Lender for any additional loss (including loss of anticipated profits), cost or expense incurred by such person as a result of such prepayment or payment, including, without limitation, any loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such person to make or maintain such Eurodollar Rate Loans or any portion thereof.

SECTION 4. CONDITIONS PRECEDENT.

4.1 Conditions Precedent to Initial LC Facility Letters of Credit, Initial Loans and Letter of Credit Accommodations . Each of the following is a condition precedent to Administrative Agents and the LC Facility Lenders providing the LC Facility and the LC Facility Issuing Bank issuing the LC Facility Letters of Credit, and the Revolving Facility Lenders, making the initial Revolving Loans and providing the initial Revolving Letter of Credit Accommodations hereunder:

(a) each Administrative Agent shall have received, in form and substance satisfactory to each such Agent, all releases, terminations and such other documents as any

such Agent may request to evidence and effectuate the termination by the existing lenders to Credit Parties of their respective financing arrangements (other than Indebtedness permitted by Section 9.9) with Credit Parties and to provide for the termination and release by it or them, as the case may be, of any interest in and to any assets and properties of Credit Parties, and such releases, terminations and other documents shall be duly authorized, executed and delivered by it or each of them, including, but not limited to, (i) UCC termination statements for all UCC financing statements previously filed by it or any of them or their predecessors, as secured party and any Credit Party, as debtor, (ii) PPSA terminations or hypothec discharges or acknowledgments for all PPSA financing statements or hypothecs previously filed or registered by it or any of them or their predecessors, or secured party and any Credit Party, as debtor, and (iii) satisfactions and discharges of any mortgages, deeds of trust or deeds to secure debt by any Credit Party in favor of such existing lender or lenders, in form acceptable for recording with the appropriate Governmental Authority;

(b) all requisite corporate action and proceedings in connection with this Agreement and the other Financing Agreements shall be satisfactory in form and substance to each Administrative Agent, and each such Agent shall have received all information and copies of all documents, including records of requisite corporate action and proceedings which such Agent may have requested in connection therewith, such documents where requested by such Agent or its counsel to be certified by appropriate corporate officers or Governmental Authority (and including a copy of the certificate of incorporation or formation of each Credit Party certified by the Secretary of State (or equivalent Governmental Authority) which shall set forth the same complete corporate or limited liability company name of each Credit Party as is set forth herein and such document as shall set forth the organizational identification number of each Borrower, if one is issued in its jurisdiction of incorporation or formation);

(c) no material adverse change shall have occurred in the assets, business or prospects of any Credit Party since December 31, 2003 and no change or event shall have occurred which would impair the ability of any Credit Party to perform its obligations hereunder or under any of the other Financing Agreements to which it is a party or of any Collateral Agent or Lenders to enforce the Obligations or realize upon any Collateral;

(d) each Collateral Agent shall have received, in form and substance satisfactory to such Collateral Agent, all consents, waivers, acknowledgments and other agreements from third persons which such Collateral Agent may deem necessary or desirable in order to permit, protect and perfect its security interests in and Liens upon the Collateral granted to such Collateral Agent or to effectuate the provisions or purposes of this Agreement and the other Financing Agreements, including, without limitation, unless the Revolving Administrative Agent shall have otherwise consented, Collateral Access Agreements for each location where books and records are held, the hypothecs, the security interests and Liens of the Canadian Collateral Agent upon the Canadian Accounts Collateral;

(e) the combined Excess Availability of US Borrowers and Canadian Borrower **s** as determined by Revolving Administrative Agent, as of the Effective Date shall be not less than the US Dollar Equivalent of $20,000,000 after giving effect to, the LC Facility Letters of Credit issued or to be issued the initial Loans made or to be made and Revolving Letter of Credit Accommodations issued or to be issued in connection with the initial transactions hereunder;

(f) Accounts Collateral Agent shall have received, in form and substance satisfactory to Accounts Collateral Agent, a Deposit Account Control Agreement by and among Accounts Collateral Agent, US Credit Parties and each bank where any US Blocked Account is maintained, in each case, duly authorized, executed and delivered by such bank and such Borrower (or shall be the bank's customer with respect to such US Blocked Accounts as Accounts Collateral Agent shall specify);

(g) Canadian Collateral Agent shall have received, in form and substance satisfactory to Canadian Collateral Agent, a Deposit Account Control Agreement by and among Canadian Collateral Agent, Canadian Borrowers and each bank at which any Canadian Blocked Account is maintained, in each case, duly authorized, executed and delivered by such bank and such Borrower (or shall be the bank's customer with respect to such Canadian Blocked Accounts as Canadian Collateral Agent shall specify);

(h) with respect to the LC Facility Issuing Bank only, the Credit-Linked Deposits from the LC Facility Lenders shall have been deposited with the LC Facility Administrative Agent;

(i) LC Facility Collateral Agent shall have received, in form and substance satisfactory to LC Facility Collateral Agent, a Deposit Account Control Agreement by and among LC Facility Administrative Agent, the applicable US Credit Parties and each bank with respect to which a Deposit Account Control Agreement is required to be maintained pursuant to the Security Agreement;

(j) LC Facility Administrative Agent shall have received a copy of, or a certificate as to coverage under, the insurance policies required by Section 9.5 (except that, with respect to flood insurance, the LC Facility Administrative Agent shall have received evidence that application has been made for such insurance and that the initial premiums required with respect thereto have been paid), each of which shall be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable or mortgagee endorsement (as applicable) and shall name the LC Facility Collateral Agent, on behalf of each LC Facility Secured Party, as additional insured, in form and substance satisfactory to the LC Facility Administrative Agent;

(k) the LC Facility Collateral Agent shall have received:

(i) a Mortgage encumbering each Mortgaged Property in favor of such Collateral Agent for the benefit of the LC Facility Secured Parties, duly executed and acknowledged by each Credit Party that is the owner of or holder of any interest in such Mortgaged Property, and otherwise in form for recording in

the recording office of each applicable political subdivision where each such Mortgaged Property is situated, together with such certificates, affidavits, questionnaires or returns as shall be required in connection with the recording or filing thereof to create a lien under applicable law, and such financing statements and any other instruments necessary to grant a mortgage lien under the laws of any applicable jurisdiction, all of which shall be in form and substance reasonably satisfactory to such Collateral Agent;

(ii) an opinion of local counsel (which counsel shall be reasonably satisfactory to such Collateral Agent) in each state in which the Mortgaged Property is located with respect to the validity and enforceability of form(s) of Mortgages to be recorded in such state and such other matters as such Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to such Collateral Agent;

(iii) with respect to each Mortgaged Property, such consents, approvals, amendments, supplements, estoppels, tenant subordination agreements or other instruments as necessary to consummate the Financing Agreements or as shall reasonably be deemed necessary by such Collateral Agent in order for the owner or holder of the fee or leasehold interest constituting such Mortgaged Property to grant the Lien contemplated by the Mortgage with respect to such Mortgaged Property;

(iv) with respect to each Mortgage, a policy of title insurance (or marked up title insurance commitment having the effect of a policy of title insurance) insuring the Lien of such Mortgage as a valid first mortgage Lien on the Mortgaged Property and fixtures described therein in the amount equal to not less than the amount set forth on Schedule 4.1(k)(iv), which policy (or unconditioned commitment therefor having the effect of a title insurance policy) (each, a "**Title Insurance Policy**") shall (A) be issued by the Title Company, (B) to the extent necessary, include such reinsurance arrangements (with provisions for direct access, if necessary) as shall be reasonably acceptable to such Collateral Agent, (C) contain a "tie-in" or "cluster" endorsement, if available under applicable law (*i.e.*, policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), (D) have been supplemented by such endorsements (or where such endorsements are not available, opinions of special counsel, architects or other professionals reasonably acceptable to such Collateral Agent) as shall be reasonably requested by such Collateral Agent (including endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, revolving credit, doing business, non-imputation, public road access, survey, variable rate, environmental lien, address, subdivision, separate tax lot and so-called comprehensive coverage over covenants and restrictions), and (E) contain no exceptions to title other than exceptions acceptable to such Collateral Agent;

(v) with respect to each Mortgaged Property, such affidavits, certificates, information (including financial data) and instruments of indemnification (including a so-called "gap" indemnification) as shall be required to induce the Title Company to issue the Title Insurance Policy/ies and endorsements contemplated above;

(vi) evidence reasonably acceptable to such Collateral Agent of payment by Borrower of all Title Insurance Policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages and issuance of the Title Policies referred to above;

(vii) with respect to each Real Property or Mortgaged Property, copies of all Leases in which Parent or any Subsidiary holds the lessor's interest or other agreements relating to possessory interests, if any. To the extent any of the foregoing affect any Mortgaged Property, such agreement shall be subordinate to the Lien of the Mortgage to be recorded against such Mortgaged Property, either expressly by its terms or pursuant to a subordination, non-disturbance and attornment agreement, and shall otherwise be acceptable to such Collateral Agent;

(viii) with respect to each Mortgaged Property, each Credit Party shall have made all notifications, registrations and filings, to the extent required by, and in accordance with, all Governmental Real Property Disclosure Requirements applicable to such Mortgaged Property; and

(ix) Surveys with respect to each Mortgaged Property except for any Mortgaged Property for which the Administrative Agents shall consent to the delivery of a Survey following the Effective Date or waive the requirement for a Survey.

(l) the Administrative Agents shall have received, in form and substance satisfactory to such Agents, such opinion letters of counsel to Credit Parties with respect to the Financing Agreements and such other matters as such Agents may request;

(m) the other Financing Agreements and all instruments and documents hereunder and thereunder shall have been duly executed and delivered to the Administrative Agents, in form and substance satisfactory to such Agents;

(n) the Refinancing shall be consummated simultaneously on the Effective Date, in each case in all material respects in accordance with the terms of the Information Memorandum and the terms of the Financing Agreements, without the waiver or amendment of any such terms that would be materially adverse to the interests of the Lenders (except with respect to the Existing Letters of Credit, which may remain outstanding to the extent permitted by Section 9.8 and Section 9.9);

(o) Parent shall have completed the issuance and sale of $150,000,000 principal amount of the Senior Secured Notes and evidence thereof shall be provided to the

Administrative Agents, and the Senior Secured Notes Indenture shall be satisfactory in all respects to the Agents;

(p) the Lenders shall be satisfied with the capitalization and the corporate or other organizational structure of the Credit Parties;

(q) after giving effect to the Refinancing and the other Refinancing transactions, the Credit Parties shall have no outstanding Indebtedness or Disqualified Capital Stock other than (a) the Loans and other extensions of credit under the Credit Facilities, (b) the Senior Secured Notes, and (c) other Indebtedness permitted by clauses (f), (g) and (h) of Section 9.9;

(r) the Administrative Agents shall have received and shall be satisfied with the form and substance of audited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of Parent and its Subsidiaries for the 2001, 2002 and 2003 fiscal years and unaudited consolidated and consolidating balance sheets and related statements of income, stockholders' equity and cash flows of Parent for (i) the fiscal quarter ended March 31, 2004, compared to the fiscal quarter ended March 31, 2003 (with respect to which the independent public accountants of Parent shall have performed a SAS 100 review) and (ii) each fiscal month after the most recent fiscal quarter for which financial statements were received by the Administrative Agents pursuant to the immediately preceding clause (i) and ended 30 days before the Effective Date;

(s) except as permitted by Section 9.8 and Section 9.9, the Existing Letters of Credit, as set forth on Schedule 4.1(s) attached hereto, shall have been replaced by the LC Facility Letters of Credit or Revolving Letter of Credit Accommodations;

(t) [Intentionally Omitted]

(u) the Administrative Agents shall have received a solvency certificate in the form of Exhibit E, dated the Effective Date and signed by the chief financial officer of Parent;

(v) the Administrative Agents shall be satisfied that all requisite governmental authorities and third parties shall have approved or consented to the Refinancing and the other transactions contemplated hereby to the extent required, all applicable appeal periods shall have expired and there shall be no litigation, governmental, administrative or judicial action, actual or threatened, that could reasonably be expected to restrain, prevent or impose burdensome conditions on the Refinancing or the other transactions contemplated hereby;

(w) the Agents shall have received all documentation and other information requested by them under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the Act;

(x) the Agents shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or

payment of all out-of-pocket expenses (including the legal fees and expenses of Cahill Gordon & Reindel LLP, special counsel to the LC Facility Administrative Agent and Bingham McCutchen LLP, special counsel to FCC, and the fees and expenses of any local counsel, foreign counsel, appraisers, consultants and other advisors to any Agent) required to be reimbursed or paid by Parent hereunder or any other Financing Agreements;

(y) the LC Facility Collateral Agent shall have received the following in form and substance satisfactory to the LC Facility Collateral Agent:

(i) an executed counterpart of the Security Agreement signed by each US Credit Party and acknowledged by U.S. Bank National Association;

(ii) certificates representing all Pledged Securities (as defined in the Security Agreement), together with executed and undated stock powers and/or assignments in blank;

(iii) evidence of the preparation for recording or filing, as applicable, of all recordings and filings of this Agreement, the Security Agreement and each other applicable Security Document, including, without limitation, with the United States Patent and Trademark Office and the United States Copyright Office, and delivery and recordation, if necessary, of such other security and other documents, including, without limitation, UCC termination statements with respect to UCC security filings, financing change statements or other personal property that are not permitted under Section 9.8, as may be necessary or, in the opinion of the LC Facility Collateral Agent, desirable to perfect, or publish notice of, the Liens created, or purported or intended to be created, by such Security Documents;

(z) each Collateral Agent shall have perfected, first priority Liens on and security interests in all Collateral (subject to Liens permitted by Section 9.8) in which such Collateral Agent has been granted a security interest; and

(aa) each Collateral Agent shall have received the Perfection Certificate dated the Effective Date and signed by an executive officer or chief financial officer of each Credit Party, together with all attachments contemplated thereby, including (where applicable) the results of a search of the UCC judgment, tax and bankruptcy (or equivalent) filings made with respect to the Credit Parties in the jurisdictions contemplated by the Perfection Certificate and copies of the financing statements (or similar documents) disclosed by such search and evidence reasonably satisfactory to each Collateral Agent, as applicable, that the Liens indicated by such financing statements (or similar documents) are permitted under Section 9.8 or arrangements satisfactory to the Collateral Agents have been made for the release or discharge thereof.

(bb) Each Administrative Agent shall have received from Parent a Closing Certificate in the form of Exhibit H attached hereto, dated the Effective Date and signed by the chief financial officer of Parent.

4.2 Conditions Precedent to All Loans, LC Facility Letters of Credit and Revolving Letter of Credit Accommodations . Each of the following is an additional condition precedent to (a) Revolving Administrative Agent and Revolving Lenders making Revolving Loans and/or providing Revolving Letter of Credit Accommodations to Borrowers, including the initial Revolving Loans and Revolving Letter of Credit Accommodations, and any future Revolving Loans and Revolving Letter of Credit Accommodations, and (b) LC Facility Administrative Agent and LC Facility Lender issuing LC Facility Letters of Credit to US Borrowers, including the initial LC Facility Letters of Credit, and Revolving Letter of Credit Accommodations and any future LC Facility Letters of Credit:

(a) (1) the Revolving Administrative Agent shall have received a borrowing request (i) in form satisfactory to Revolving Administrative Agent if Revolving Loans are being requested which borrowing request shall certify that the last sentence of Section 2.2 shall not be contravened thereby or (ii) as required by Section 2.4(d) in the case of the issuance, amendment, extension or renewal of a Revolving Letter of Credit Accommodation, or (2) in the case of the issuance, amendment, extension or renewal of a LC Facility Letter of Credit, the LC Facility Administrative Agent and the LC Facility Issuing Bank shall have received a notice requesting the issuance, amendment, extension or renewal of such LC Facility Letter of Credit as required by Section 2.6 and approval thereof by the LC Facility Administrative Agent;

(b) all representations and warranties contained herein and in the other Financing Agreements shall be true and correct with the same effect as though such representations and warranties had been made on and as of the date of the making of each such Revolving Loan, or the issuance, extension or amendment of any LC Facility Letter of Credit or Revolving Letter of Credit Accommodation and after giving effect thereto, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate on and as of such earlier date);

(c) no law, regulation, order, judgment or decree of any Governmental Authority shall exist, and no action, suit, investigation, litigation or proceeding shall be pending or threatened in any court or before any arbitrator or Governmental Authority, which (i) purports to enjoin, prohibit, restrain or otherwise affect (A) the making of the Loans, the provision of each such LC Facility Letter of Credit or the provision of the Revolving Letter of Credit Accommodations, or (B) the consummation of the transactions contemplated pursuant to the terms hereof or the other Financing Agreements; or (ii) has or could reasonably be expected to have a Material Adverse Effect on the assets, business or prospects of any Credit Party or would impair the ability of any Credit Party to perform its obligations hereunder or under any of the other Financing Agreements or of Agents and Lenders to enforce any Obligations or realize upon any of the Collateral;

(d) no Default or Event of Default shall exist or have occurred and be continuing on and as of the date of the making of such Loan, providing each such LC Facility Letter of Credit or providing each such Revolving Letter of Credit Accommodation and after giving effect thereto; and

(e) In addition to the other conditions precedent to Revolving Administrative Agent and Revolving Lenders making Loans and/or providing Revolving Letter of Credit Accommodations to Borrowers, the conditions to Loans and Revolving Letter of Credit Accommodations by or on behalf of Canadian Lender in favor of Canadian Borrowers shall also include that no requirement of the Minister of National Revenue for payment pursuant to Section 224, or any successor section, of the Income Tax Act (Canada) or Section 317, or any successor section of the Excise Act (Canada) or any comparable provision of similar legislation shall have been received by Revolving Administrative Agent, Canadian Lender or any other Person in respect of a Canadian Borrower or otherwise issued in respect of a Canadian Borrower.

SECTION 5. GRANT AND PERFECTION OF SECURITY INTEREST .

5.1 Grant of Security Interests in Accounts Collateral . To secure payment and performance of all Obligations, each US Credit Party hereby grants to the Accounts Collateral Agent for the benefit of itself and each other Secured Party a continuing security interest in, a Lien upon, and a right of set off against, all right, title and interest of the US Credit Parties in all of the following property, whether now owned or hereafter acquired or existing, and wherever located (the "**Accounts Collateral**"):

(i) all Accounts;

(ii) all General Intangibles that arise from, relate to, or constitute proceeds of, Accounts;

(iii) all Chattel Paper (including all tangible and Electronic Chattel Paper) that arise from, relate to, or constitute proceeds of Accounts;

(iv) all Instruments (including all promissory notes) that arise from, relate to, or constitute proceeds of Accounts;

(v) all Documents that arise from, relate to, or constitute proceeds of Accounts;

(vi) all US Blocked Accounts;

(vii) all letters of credit, banker's acceptances and similar instruments and including all Letter-of-Credit Rights that arise from, relate to, or constitute proceeds of Accounts;

(viii) all Supporting Obligations to and in respect of Receivables, including (i) rights and remedies under or relating to guaranties, contracts of suretyship, Letters of Credit and credit and other insurance related to Receivables, (ii) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lien or secured party, (iii) Goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, Receivables,

including returned, repossessed and reclaimed goods, and (iv) deposits by and property of account debtors or other persons securing the obligations of account debtors;

(ix) all Investment Property (including securities, whether certificated or uncertificated, Securities Accounts, security entitlements, Commodity Contracts or Commodity Accounts) and all monies, credit balances, deposits and other property of any Credit Party now or hereafter held or received by or in transit to any US Revolving Secured Party or their Affiliates or at any other depository or other institution from or for the account of any US Credit Party, whether for safekeeping, pledge, custody, transmission, collection or otherwise, in each case, that arise from, relate to, or constitute proceeds of Accounts;

(x) all Commercial Tort Claims relating to Accounts or Receivables;

(xi) to the extent not otherwise described above, all Receivables; and

(xii) all products and Proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the Accounts Collateral.

Notwithstanding the foregoing, the "Accounts Collateral" shall not extend to or include any cash or cash equivalents released from any US Blocked Account to Borrowers in accordance with Section 6.3.

5.2 Grant of Security Interests in Canadian Accounts Collateral . To secure payment and performance of all Canadian Obligations, (a) each Canadian Borrower hereby grants to the Canadian Collateral Agent for the benefit of the Canadian Secured Parties a continuing security interest in, a Lien upon, and a right of set off against, all right, title and interest of the Canadian Borrowers in all of the following property, whether now owned or hereafter acquired or existing, and wherever located (the "**Canadian Accounts Collateral**"):

(i) all Accounts;

(ii) all General Intangibles that arise from, relate to, or constitute proceeds of, Accounts;

(iii) all Chattel Paper (including all tangible and Electronic Chattel Paper) that arise from, relate to, or constitute proceeds of Accounts;

(iv) all Instruments (including all promissory notes) that arise from, relate to, or constitute proceeds of Accounts;

(v) all Documents that arise from, relate to, or constitute proceeds of Accounts;

(vi) all Canadian Blocked Accounts;

(vii) all letters of credit, banker's acceptances and similar instruments and including all Letter-of-Credit Rights that arise from, relate to, or constitute proceeds of Accounts;

(viii) all Supporting Obligations to and in respect of Receivables, including (i) rights and remedies under or relating to guaranties, contracts of suretyship, Letters of Credit and credit and other insurance related to Receivables, (ii) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lien or secured party, (iii) Goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, Receivables, including returned, repossessed and reclaimed goods, and (iv) deposits by and property of account debtors or other persons securing the obligations of account debtors;

(ix) all Investment Property (including securities, whether certificated or uncertificated, Securities Accounts, security entitlements, Commodity Contracts or Commodity Accounts) and all monies, credit balances, deposits and other property of any Canadian Borrower now or hereafter held or received by or in transit to any Canadian Secured Party or their Affiliates or at any other depository or other institution from or for the account of any Canadian Borrower, whether for safekeeping, pledge, custody, transmission, collection or otherwise, in each case, that arise from, relate to, or constitute proceeds of Accounts;

(x) all Commercial Tort Claims relating to Accounts or Receivables;

(xi) to the extent not otherwise described above, all Receivables; and

(xii) all products and Proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the Canadian Accounts Collateral; and

(b) each Quebec Borrower has executed the Deed of Hypothec and the Moveable Hypothec.

Notwithstanding the foregoing, the "Canadian Accounts Collateral" shall not extend to or include any cash or cash equivalents released from any Canadian Blocked Account to Borrowers in accordance with Section 6.3.

5.3 Perfection of Security Interests in Accounts Collateral .

(a) Each US Credit Party irrevocably and unconditionally authorizes the Accounts Collateral Agent (or its agents) to file at any time and from time to time such financing statements with respect to the Accounts Collateral naming the Accounts Collateral Agent or its designee as the secured party and each such US Credit Party as debtor, as the Accounts Collateral Agent may require, and including any other information with respect to each such US Credit Party or otherwise required by part 5 of Article 9 of the Uniform Commercial Code of such jurisdiction as the Accounts Collateral Agent may determine, together with any amendments and

continuations with respect thereto, which authorization shall apply to all financing statements filed on, prior to or after the date hereof. Each US Credit Party hereby ratifies and approves all financing statements naming the Accounts Collateral Agent or its designee as secured party and each such US Credit Party as debtor (and any amendments with respect to such financing statements) filed by or on behalf of the Accounts Collateral Agent prior to the date hereof and ratifies and confirms the authorization of the Accounts Collateral Agent to file such financing statements (and amendments, if any). Each US Credit Party hereby authorizes the Accounts Collateral Agent or its designee to adopt on behalf of each such US Credit Party any symbol required for authenticating any electronic filing. In no event shall any US Credit Party at any time file, or permit or cause to be filed, any correction statement or termination statement with respect to any financing statement (or amendment or continuation with respect thereto) without the prior consent of the Accounts Collateral Agent.

(b) US Credit Parties do not have any Chattel Paper (whether tangible or electronic) or Instruments as of the date hereof, except as set forth in the Perfection Certificate. In the event that any US Credit Party shall be entitled to or shall receive any Chattel Paper or Instrument after the date hereof constituting Accounts Collateral, US Credit Parties shall promptly notify the Accounts Collateral Agent. Promptly upon the receipt thereof by or on behalf of any US Credit Party (including by any agent or representative), US Credit Parties shall deliver, or cause to be delivered, to the Accounts Collateral Agent, all tangible Chattel Paper and Instruments that any US Credit Party may at any time acquire, accompanied by such instruments of transfer or assignment duly executed in blank as the Accounts Collateral Agent may from time to time specify.

(c) In the event that any US Credit Party shall at any time hold or acquire an interest in any Electronic Chattel Paper or any "transferable record" (as such term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction) constituting Accounts Collateral, US Credit Parties shall promptly notify the Accounts Collateral Agent. Promptly upon the Accounts Collateral Agent's request, US Credit Parties shall take, or cause to be taken, such actions as the Accounts Collateral Agent may reasonably request to give the Accounts Collateral Agent control of such Electronic Chattel Paper under Section 9-105 of the UCC and control of such transferable record under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as in effect in such jurisdiction.

(d) US Credit Parties do not have any Deposit Accounts as of the date hereof, except as set forth in the Perfection Certificate. US Credit Parties shall not, directly or indirectly, after the date hereof open, establish or maintain any Deposit Account constituting Accounts Collateral unless each of the following conditions is satisfied: (i) the Accounts Collateral Agent shall have received not less than five (5) Business Days prior written notice of the intention of any US Credit Party to open or establish such Deposit Account which notice shall specify in reasonable detail and specificity acceptable to the Accounts Collateral Agent, the name of the Deposit Account, the owner of the Deposit Account, the name and address of the bank or other financial institution at which such Deposit Account is to be opened or established, the individual at such bank or other financial institution with whom such US Credit Party is dealing and the

purpose of the account, (ii) the bank or other financial institution where such account is opened or maintained shall be acceptable to the Accounts Collateral Agent, and (iii) on or before the opening of such Deposit Account, such US Credit Party shall, as the Accounts Collateral Agent shall specify with respect to any Blocked Account, either (A) deliver to the Accounts Collateral Agent a Deposit Account Control Agreement with respect to such Deposit Account duly authorized, executed and delivered by such US Credit Party and the bank at which such Deposit Account is opened and maintained, or (B) arrange for the Accounts Collateral Agent to become the customer of the bank with respect to the Deposit Account on terms and conditions acceptable to the Accounts Collateral Agent. The terms of this subsection (d) shall not apply to Deposit Accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of US Credit Parties' salaried employees.

(e) US Credit Parties do not own or hold, directly or indirectly, beneficially or as record owner or both, any Investment Property, as of the date hereof, or have any Securities Account, Commodity Account or other similar account with any bank or other financial institution or other Securities Intermediary or Commodity Intermediary as of the date hereof, in each case except as set forth in the Perfection Certificate.

(i) In the event that any US Credit Party shall be entitled to or shall at any time after the date hereof hold or acquire any certificated securities constituting Accounts Collateral, such US Credit Party shall promptly endorse, assign and deliver the same to Accounts Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Accounts Collateral Agent may from time to time specify. If any securities constituting Accounts Collateral, now or hereafter acquired by any US Credit Party, are uncertificated and are issued to such US Credit Party or its nominee directly by the issuer thereof, such US Credit Party shall immediately notify Accounts Collateral Agent thereof and shall, as the Accounts Collateral Agent may specify, either (A) cause the issuer to agree to comply with instructions from the Accounts Collateral Agent as to such securities, without further consent of such US Credit Party or such nominee, or (B) arrange for the Accounts Collateral Agent to become the registered owner of the securities.

(ii) US Credit Parties shall not, directly or indirectly, after the date hereof open, establish or maintain any Securities Account or Commodity Account constituting Accounts Collateral with any Securities Intermediary or Commodity Intermediary unless each of the following conditions is satisfied: (A) the Accounts Collateral Agent shall have received not less than five (5) Business Days prior written notice of the intention of a US Credit Party to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to the Accounts Collateral Agent the name of the account, the owner of the account, the name and address of the Securities Intermediary or Commodity Intermediary at which such account is to be opened or established, the individual at such intermediary with whom such US Credit Party is dealing and the purpose of the account, (B) the Securities Intermediary or Commodity Intermediary (as the case may be) where such account is opened or maintained shall be acceptable to the Accounts Collateral Agent, and (C) on or before the opening of such Securities Account or Commodity Account, such US Credit Party shall, as the Accounts Collateral Agent may

specify, either (1) execute and deliver, and cause to be executed and delivered to the Accounts Collateral Agent, an Investment Property Control Agreement with respect thereto duly authorized, executed and delivered by such US Credit Party and such Securities Intermediary or Commodity Intermediary, or (2) arrange for the Accounts Collateral Agent to become the entitlement holder with respect to such Investment Property on terms and conditions acceptable to the Accounts Collateral Agent.

(f) No US Credit Party is the beneficiary or otherwise entitled to any right to payment under any letter of credit, banker's acceptance or similar instrument as of the date hereof, except as set forth in the Perfection Certificate. In the event that any US Credit Party shall be entitled to or shall receive any right to payment under any letter of credit, banker's acceptance or any similar instrument constituting Accounts Collateral, whether as beneficiary thereof or otherwise after the date hereof, such US Credit Party shall promptly notify the Accounts Collateral Agent. Each US Credit Party shall immediately, as the Accounts Collateral Agent may specify, either (i) deliver, or cause to be delivered to the Accounts Collateral Agent, with respect to any such letter of credit, banker's acceptance or similar instrument, the written agreement of the issuer and any other nominated person obligated to make any payment in respect thereof (including any confirming or negotiating bank), in form and substance satisfactory to the Accounts Collateral Agent, consenting to the assignment of the proceeds of the letter of credit to the Accounts Collateral Agent by such US Credit Party and agreeing to make all payments thereon directly to the Accounts Collateral Agent or as such Collateral Agent may otherwise direct, or (ii) cause the Accounts Collateral Agent to become, at US Credit Parties' expense, the transferee beneficiary of the Letter of Credit, banker's acceptance or similar instrument (as the case may be).

(g) No US Credit Party has Commercial Tort Claims as of the date hereof, except as set forth in the Perfection Certificate. In the event that any US Credit Party shall at any time after the date hereof acquire any Commercial Tort Claim constituting Accounts Collateral, such US Credit Party shall promptly notify the Accounts Collateral Agent, which notice shall (i) set forth in reasonable detail the basis for and nature of such Commercial Tort Claim, and (ii) include the express grant by such US Credit Party to the Accounts Collateral Agent of a security interest in such Commercial Tort Claim. In the event that such notice does not include such grant of a security interest, the sending thereof by such US Credit Party to the Accounts Collateral Agent shall be deemed to constitute such grant to the Accounts Collateral Agent. Upon the sending of such notice, any Commercial Tort Claim described therein shall constitute part of the Accounts Collateral and shall be deemed included therein. Without limiting the authorization the Accounts Collateral Agent provided in Section 5.3(a) and (b) hereof or otherwise arising by the execution by US Credit Parties of this Agreement, the Accounts Collateral Agent is hereby irrevocably authorized from time to time and at any time to file such financing statements naming the Accounts Collateral Agent or its designee as secured party and each US Credit Party as debtor, or any amendments to any financing statements, covering any such Commercial Tort Claim as Accounts Collateral. In addition, US Credit Parties shall promptly upon the Accounts Collateral Agent's request, execute and deliver, or cause to be executed and delivered, to the Accounts Collateral Agent such other agreements, documents and instruments as the Accounts Collateral Agent may require in connection with such Commercial Tort Claim.

(h) US Credit Parties shall take any other actions reasonably requested by the Accounts Collateral Agent from time to time to cause the attachment, perfection and first priority of, and the ability of the Accounts Collateral Agent to enforce, the security interest of the Accounts Collateral Agent in any and all of the Accounts Collateral, including, without limitation, (i) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC, the PPSA or other applicable law, to the extent, if any, that a US Credit Party's signature thereon is required therefor, (ii) complying with any provision of any statute, regulation or treaty of the United States or Canada as to any applicable portion of the Accounts Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Accounts Collateral Agent to enforce, its security interest in such Accounts Collateral, or (iii) obtaining the consents and approvals of any Governmental Authority or third party, including, without limitation, any consent of any licensor, lessor or other person obligated on the Accounts Collateral, and taking all actions required by any earlier versions of the UCC or by other law, as applicable in any relevant jurisdiction.

5.4 Perfection of Security Interest in Canadian Collateral .

(a) Each Canadian Borrower irrevocably and unconditionally authorizes the Canadian Collateral Agent to file at any time and from time to time such financing statements with respect to the Canadian Accounts Collateral naming the Canadian Collateral Agent or its designee as the secured party and each Canadian Borrower as debtor, as Canadian Collateral Agent may require, which authorization shall apply to all financing statements filed on, prior to or after the date hereof. Each Canadian Borrower hereby ratifies and approves all financing statements naming the Canadian Collateral Agent or its designee as secured party and each Canadian Borrower as debtor (and any amendments with respect to such financing statements) filed by or on behalf of Canadian Collateral Agent prior to the date hereof and ratifies and confirms the authorization of Canadian Collateral Agent to file such financing statements (and amendments, if any). In no event shall any Canadian Borrower at any time file, or permit or cause to be filed, any financing change statement, discharge or termination statement with respect to any financing statement (or amendment or continuation with respect thereto) without the prior consent of the Canadian Collateral Agent.

(b) Canadian Borrowers do not have any Chattel Paper (whether tangible or electronic) or Instruments as of the date hereof, except as set forth in the Perfection Certificate. In the event that any Canadian Borrower shall be entitled to or shall receive any Chattel Paper or Instrument after the date hereof, Canadian Borrowers shall promptly notify the Canadian Collateral Agent. Promptly upon the receipt thereof by or on behalf of any Canadian Borrowers (including by any agent or representative), Canadian Borrowers shall deliver, or cause to be delivered to the Canadian Collateral Agent, all tangible Chattel Paper and Instruments that any Canadian Borrower may at any time acquire, accompanied by such instruments of transfer or assignment duly executed in blank as the Canadian Collateral Agent may from time to time specify.

(c) Canadian Borrowers do not have any Deposit Accounts as of the date hereof, except as set forth in the Perfection Certificate. Canadian Borrowers shall not, directly or indirectly, after the date hereof open, establish or maintain any Deposit Account unless each of the following conditions is satisfied: (i) Canadian Collateral Agent shall have received not less

than five (5) Business Days prior written notice of the intention of any Canadian Borrower to open or establish such Deposit Account which notice shall specify in reasonable detail and specificity acceptable to the Canadian Collateral Agent, the name of the Deposit Account, the owner of the Deposit Account, the name and address of the bank or other financial institution at which such Deposit Account is to be opened or established, the individual at such bank or other financial institution with whom such Canadian Borrower is dealing and the purpose of the account, (ii) the bank or other financial institution where such account is opened or maintained shall be acceptable to the Canadian Collateral Agent, and (iii) on or before the opening of such Deposit Account, such Canadian Borrower shall, as the Canadian Accounts Collateral Agent shall specify with respect to any Blocked Account, either (A) deliver to Canadian Collateral Agent a Deposit Account Control Agreement with respect to such Deposit Account duly authorized, executed and delivered by such Canadian Borrower and the bank at which such deposit account is opened and maintained, or (B) arrange for the Canadian Collateral Agent to become the customer of the bank with respect to the Deposit Account on terms and conditions acceptable to Canadian Collateral Agent. The terms of this subsection (d) shall not apply to Deposit Accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Canadian Borrowers' salaried employees.

(d) Canadian Borrowers do not own or hold, directly or indirectly, beneficially or as record owner or both, any Investment Property, as of the date hereof, or have any Securities Account, Commodity Account or other similar account with any bank or other financial institution or other Securities Intermediary or Commodity Intermediary as of the date hereof, in each case except as set forth in the Perfection Certificate. Canadian Borrowers shall not, directly or indirectly, after the date hereof open, establish or maintain any Securities Account or Commodity Account constituting Canadian Accounts Collateral with any Securities Intermediary or Commodity Intermediary unless each of the following conditions is satisfied: (A) Canadian Collateral Agent shall have received not less than five (5) Business Days prior written notice of the intention of a Canadian Borrower to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to Canadian Collateral Agent the name of the account, the owner of the account, the name and address of the securities intermediary or commodity intermediary at which such account is to be opened or established, the individual at such intermediary with whom such Canadian Borrower is dealing and the purpose of the account, (B) the Securities Intermediary or Commodity Intermediary (as the case may be) where such account is opened or maintained shall be acceptable to the Canadian Collateral Agent, and (C) on or before the opening of such Securities Account or Commodity Account, such Canadian Borrower shall, as the Canadian Collateral Agent may specify, either (1) execute and deliver, and cause to be executed and delivered to the Canadian Collateral Agent, an Investment Property Control Agreement with respect thereto duly authorized, executed and delivered by such Canadian Borrower and such securities intermediary or commodity intermediary, or (2) arrange for Canadian Collateral Agent to become the entitlement holder with respect to such Investment Property on terms and conditions acceptable to Canadian Collateral Agent.

(e) No Canadian Borrower is the beneficiary or otherwise entitled to any right to payment under any letter of credit, banker's acceptance or similar instrument as of the date hereof, except as set forth in the Perfection Certificate. In the event that any Canadian Borrower shall be entitled to or shall receive any right to payment under any letter of credit, banker's

acceptance or any similar instrument, whether as beneficiary thereof or otherwise after the date hereof, such Canadian Borrower shall promptly notify Canadian Collateral Agent. Each Canadian Borrower shall immediately, as the Canadian Collateral Agent may specify, either (i) deliver, or cause to be delivered to Canadian Collateral Agent, with respect to any such letter of credit, banker's acceptance or similar instrument, the written agreement of the issuer and any other nominated person obligated to make any payment in respect thereof (including any confirming or negotiating bank), in form and substance satisfactory to Canadian Collateral Agent, consenting to the assignment of the proceeds of the letter of credit to Canadian Collateral Agent by such Canadian Borrower and agreeing to make all payments thereon directly to Canadian Collateral Agent or as Canadian Collateral Agent may otherwise direct, or (ii) cause Canadian Collateral Agent to become, at Canadian Borrowers' expense, the transferee beneficiary of the Letter of Credit, banker's acceptance or similar instrument (as the case may be).

(f) No Canadian Borrower has Commercial Tort Claims as of the date hereof, except as set forth in the Perfection Certificate. In the event that any Canadian Borrower shall at any time after the date hereof acquire any Commercial Tort Claim, such Canadian Borrower shall promptly notify the Canadian Collateral Agent thereof in writing, which notice shall (i) set forth in reasonable detail the basis for and nature of such Commercial Tort Claim, and (ii) include the express grant by such Canadian Borrower to Canadian Collateral Agent of a security interest in such Commercial Tort Claim. In the event that such notice does not include such grant of a security interest, the sending thereof by such Canadian Borrower to Canadian Collateral Agent shall be deemed to constitute such grant to Canadian Collateral Agent. Upon the sending of such notice, any Commercial Tort Claim described therein shall constitute part of the Collateral and shall be deemed included therein. Without limiting the authorization of Canadian Collateral Agent provided in Section 5.2(a) and (b) hereof or otherwise arising by the execution by Canadian Borrowers of this Agreement, Canadian Collateral Agent is hereby irrevocably authorized from time to time and at any time to file such financing statements naming Canadian Collateral Agent or its designee as secured party and each Canadian Borrower as debtor, or any amendments to any financing statements, covering any such Commercial Tort Claim as Collateral. In addition, Canadian Borrowers shall promptly upon Canadian Collateral Agent's request, execute and deliver, or cause to be executed and delivered, to Canadian Collateral Agent such other agreements, documents and instruments as Canadian Collateral Agent may require in connection with such Commercial Tort Claim.

(g) Canadian Borrowers shall take any other actions reasonably requested by the Canadian Collateral Agent from time to time to cause the attachment, perfection and first priority of, and the ability of Canadian Collateral Agent to enforce, the security interest of Canadian Collateral Agent in any and all of the Collateral which has been pledged to Canadian Collateral Agent, including, without limitation, (i) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC, the PPSA or other applicable law, to the extent, if any, that a Canadian Borrower's signature thereon is required therefor, (ii) complying with any provision of any statute, regulation or treaty of the United States or Canada as to any applicable portion of the Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Canadian Collateral Agent to enforce, the security interest of Canadian Collateral Agent in such Collateral, or (iii) obtaining the consents and approvals of any Governmental Authority or third party, including, without limitation, any

consent of any licensor, lessor or other person obligated on such Collateral, and taking all actions required by any earlier versions of the PPSA, UCC or by other law, as applicable in any relevant jurisdiction.

SECTION 6. COLLECTION AND ADMINISTRATION.

6.1 US Borrowers' Loan Account.

(a) Revolving Administrative Agent shall maintain one or more loan account(s) on its books in which shall be recorded (i) all US Revolving Loans, Revolving Letter of Credit Accommodations and other US Revolving Obligations, (ii) all payments made by or on behalf of US Borrowers in respect thereof, and (iii) all other appropriate debits and credits as provided in this Agreement, including fees, charges, costs, expenses and interest in respect of the US Revolving Obligations. All entries in the loan account(s) shall be made in accordance with Revolving Administrative Agent's customary practices as in effect from time to time.

(b) Canadian Collateral Agent shall maintain one or more loan account(s) on its books in which shall be recorded (i) all Canadian Revolving Loans and other Canadian Obligations, (ii) all payments made by or on behalf of Canadian Borrowers in respect thereof, and (iii) all other appropriate debits and credits as provided in this Agreement, including fees, charges, costs, expenses and interest. All entries in the loan account(s) shall be made in accordance with Canadian Collateral Agent's customary practices as in effect from time to time.

6.2 Statements.

(a) Revolving Administrative Agent shall render to US Borrowers each month a statement setting forth the balance in the US Borrowers' loan account(s) maintained by Revolving Administrative Agent for Borrowers pursuant to the provisions of this Agreement, including principal, interest, fees, costs and expenses. Each such statement shall be subject to subsequent adjustment by Revolving Administrative Agent but shall, absent manifest errors or omissions, be considered correct and deemed accepted by US Borrowers and conclusively binding upon US Borrowers as an account stated except to the extent that Revolving Administrative Agent receives a written notice from US Borrowers of any specific exceptions of US Borrower thereto within thirty (30) days after the date such statement has been mailed by Revolving Administrative Agent. Until such time as Revolving Administrative Agent shall have rendered to US Borrowers a written statement as provided above, the balance in US Borrowers' loan account(s) shall be presumptive evidence of the amounts due and owing to Revolving Administrative Agent and US Revolving Lenders by US Borrowers.

(b) US Borrowers shall deliver or cause to be delivered (at the expense of US Borrowers) to the Revolving Administrative Agent (i) each month so long as Excess Availability is at least $15.0 million, or (ii) weekly or daily, in the sole discretion of the Revolving Administrative Agent if the Excess Availability is less than $15.0 million, a US Borrowing Base Certificate accompanied by a calculation of the amount applicable to payables and held checks referenced in clauses (a)(2)(i) and (a)(2)(ii) in the definition of Excess Availability, together with such supporting detail and documentation as shall be requested by the Revolving Administrative Agent in its reasonable credit judgment.

The delivery of each certificate and report or any other information delivered pursuant to this Section 6.2(b) shall constitute a representation and warranty by US Borrowers that the statements and information contained therein are true and correct in all material respects on and as of such date.

(c) The Canadian Collateral Agent shall render to Canadian Borrowers and the Revolving Administrative Agent each month a statement setting forth the balance in the Canadian Borrowers' loan account(s) maintained by Canadian Collateral Agent for Canadian Borrowers pursuant to the provisions of this Agreement, including principal, interest, fees, costs and expenses. Each such statement shall be subject to subsequent adjustment by Canadian Collateral Agent but shall, absent manifest errors or omissions, be considered correct and deemed accepted by Canadian Borrowers and conclusively binding upon Canadian Borrowers as an account stated except to the extent that Canadian Collateral Agent receives a written notice from Canadian Borrowers of any specific exceptions of Canadian Borrowers thereto within thirty (30) days after the date such statement has been mailed by Canadian Collateral Agent. Until such time as Canadian Collateral Agent shall have rendered to Canadian Borrowers a written statement as provided above, the balance in Canadian Borrowers' loan account(s) shall be presumptive evidence of the amounts due and owing to Canadian Collateral Agent and Canadian Lender by Canadian Borrowers.

(d) Canadian Borrowers shall deliver or cause to be delivered (at the expense of Canadian Borrowers) to the Revolving Administrative Agent and the Canadian Collateral Agent (i) each month, so long as Excess Availability is at least $15.0 million, or (ii) weekly or daily, in the sole discretion of the Revolving Administrative Agent if Excess Availability is less than $15.0 million, a Canadian Borrowing Base Certificate accompanied by a calculation of the amount applicable to payables and held checks referenced in clauses (b)(i) and (b)(ii) in the definition of Excess Availability, together with such supporting detail and documentation as shall be requested by the Revolving Administrative Agent in its reasonable credit judgment.

The delivery of each certificate and report or any other information delivered pursuant to this Section 6.2(d) shall constitute a representation and warranty by Canadian Borrowers that the statements and information contained therein are true and correct in all material respects on and as of such date.

6.3 Collection of Accounts.

This Section 6.3 shall only apply prior to the Discharge of Revolving Obligations.

(a) US Credit Parties shall establish and maintain, at their expense, blocked accounts or lockboxes and related blocked accounts (in either case, "**US Blocked Accounts**"), as the Accounts Collateral Agent may specify, with such banks as are acceptable to Accounts Collateral Agent into which US Credit Parties shall promptly deposit and direct their account debtors to directly remit all payments on Receivables (except that any Deposit Accounts into which payments on Receivables are deposited shall not be required to be maintained as US Blocked Accounts to the extent that no more than $50,000 in the aggregate is maintained in all such Deposit Accounts that are not US Blocked Accounts at any time), whether by cash, check or other manner. US Credit Parties shall deliver, or cause to be delivered to Accounts Collateral Agent, a

Depository Account Control Agreement duly authorized, executed and delivered by each bank where a US Blocked Account is maintained as provided in Section 5.3 hereof or at any time and from time to time Accounts Collateral Agent may become bank's customer with respect to the US Blocked Accounts and promptly upon Accounts Collateral Agent's request, US Credit Parties shall execute and deliver such agreements or documents as Accounts Collateral Agent may require in connection therewith. Prior to the Discharge of Revolving Obligations, US Credit Parties agree that all payments made to such US Blocked Accounts or other funds received and collected by Revolving Administrative Agent, whether in respect of the Receivables or otherwise shall be treated as payments to Revolving Administrative Agent for the benefit of US Revolving Secured Parties in respect of the US Revolving Obligations and therefore shall constitute the property of the Revolving Secured Parties to the extent of the then outstanding US Revolving Obligations.

(b) For purposes of calculating the amount of the US Revolving Loans available to US Borrowers, (i) if there are outstanding US Revolving Loans, such payments will be applied (conditional upon final collection) to the US Revolving Obligations on the Business Day of receipt by Revolving Administrative Agent of immediately available funds in the Revolving Agent Payment Account provided such payments and notice thereof are received in accordance with Revolving Administrative Agent's usual and customary practices as in effect from time to time and within sufficient time to credit US Borrowers' loan account(s) on such day, and if not, then on the next Business Day, or (ii) if no US Revolving Loans are outstanding, such amount shall be transferred to an account agreed to by Revolving Administrative Agent and Parent unless an Event of Default shall have occurred and is continuing.

(c) Each US Credit Party and its shareholders, directors, employees, agents, Subsidiaries or other Affiliates shall, acting as trustee for US Revolving Secured Parties, receive, as the property of US Revolving Secured Parties, any monies, checks, notes, drafts or any other payment relating to and/or proceeds of Accounts which come into their possession or under their control and immediately upon receipt thereof, shall deposit or cause the same to be deposited in the US Blocked Accounts, or remit the same or cause the same to be remitted, in kind, to Revolving Administrative Agent for the benefit of itself and the other US Revolving Secured Parties . In no event shall the same be commingled with any US Credit Party's own funds. Each US Credit Party agrees to reimburse Revolving Administrative Agent and the other US Revolving Secured Parties on demand for any amounts owed or paid to any bank at which a US Blocked Account is established or any other bank or person involved in the transfer of funds to or from the US Blocked Accounts arising out of Revolving Administrative Agent's or any other US Revolving Secured Party's payments to or indemnification of such bank or person. The obligation of US Credit Parties to reimburse Revolving Administrative Agent and the other US Revolving Secured Parties for such amounts pursuant to this Section 6.3 shall survive the termination or non-renewal of this Agreement.

(d) No US Credit Party shall permit any payment relating to or constituting proceeds of Collateral other than Accounts Collateral to be deposited into any US Blocked Account or the Revolving Agent Payment Account. All payments relating to or constituting proceeds of Collateral other than Accounts Collateral shall instead be deposited into (i) a Canadian Blocked Account, to the extent constituting proceeds of Canadian Accounts Collateral or (ii) in

all other cases, a Deposit Account which is subject to a Deposit Account Control Agreement in favor of LC Facility Collateral Agent. US Credit Parties shall immediately notify each Administrative Agent if any payment or deposit is made contrary to this provision.

(e) Canadian Borrowers shall establish and maintain, at their expense, blocked accounts or lockboxes and related blocked accounts (in either case, "**Canadian Blocked Accounts**"), as the Canadian Collateral Agent may specify, with such banks as are acceptable to Canadian Collateral Agent into which Canadian Borrowers shall promptly deposit and direct their account debtors to directly remit all payments on Receivables, whether by cash, check or other manner. Canadian Borrowers shall deliver, or cause to be delivered to Canadian Collateral Agent, a Depository Account Control Agreement duly authorized, executed and delivered by each bank where a Canadian Blocked Account is maintained as provided in Section 5.4 hereof or at any time and from time to time Canadian Collateral Agent may become bank's customer with respect to the Canadian Blocked Accounts and promptly upon Canadian Collateral Agent's request, Canadian Borrowers shall execute and deliver such agreements or documents as Canadian Collateral Agent may require in connection therewith. Canadian Borrowers agree that all payments made to such Canadian Blocked Accounts or other funds received and collected by Revolving Administrative Agent or Canadian Collateral Agent, as the case may be, whether in respect of the Receivables or otherwise shall be treated as payments to Canadian Collateral Agent for the benefit of Canadian Secured Parties in respect of the Canadian Obligations and therefore shall constitute the property of the Canadian Secured Parties to the extent of the then outstanding Canadian Obligations.

(f) For purposes of calculating the amount of the Canadian Revolving Loans available to Canadian Borrowers, (i) if there are outstanding Canadian Revolving Loans, such payments will be applied (conditional upon final collection) to the Canadian Obligations on the Business Day of receipt by Revolving Administrative Agent or Canadian Collateral Agent, as the case may be, of immediately available funds in the Canadian Payment Account provided such payments and notice thereof are received in accordance with Canadian Collateral Agent's usual and customary practices as in effect from time to time and within sufficient time to credit Canadian Borrowers' loan account(s) on such day, and if not, then on the next Business Day, or (ii) if no Canadian Revolving Loans are outstanding, such amount shall be transferred to a Canadian Blocked Account agreed to by Revolving Administrative Agent and Parent unless an Event of Default shall have occurred and is continuing.

(g) Each Canadian Borrower and its shareholders, directors, employees, agents, Subsidiaries or other Affiliates shall, acting as trustee for Canadian Secured Parties, receive, as the property of Canadian Secured Parties, any monies, checks, notes, drafts or any other payment relating to and/or proceeds of Accounts which come into their possession or under their control and immediately upon receipt thereof, shall deposit or cause the same to be deposited in the Canadian Blocked Accounts, or remit the same or cause the same to be remitted, in kind, to Canadian Collateral Agent for the benefit of itself and the other Canadian Secured Parties. In no event shall the same be commingled with any Canadian Borrower's own funds. Each Canadian Borrower agrees to reimburse Canadian Collateral Agent and the other Canadian Secured Parties on demand for any amounts owed or paid to any bank at which a Canadian Blocked Account is established or any other bank or person involved in the transfer of funds to or from the Canadian

Blocked Accounts arising out of Canadian Collateral Agent's or any other Canadian Secured Party's payments to or indemnification of such bank or person. The obligation of Canadian Borrowers to reimburse Canadian Collateral Agent and the other Canadian Secured Parties for such amounts pursuant to this Section 6.3 shall survive the termination or non-renewal of this Agreement.

6.4 Payments under Revolving Facility .

(a) All Revolving Obligations of US Borrowers shall be payable to the Revolving Agent Payment Account as provided in Section 6.3 and all Canadian Obligations of Canadian Borrowers shall be payable to the Canadian Payment Account or, in each case such other place as Revolving Administrative Agent or the Canadian Collateral Agent, as applicable, may designate from time to time. Revolving Administrative Agent shall apply payments received or collected from US Borrowers or for the account of US Borrowers in respect of Accounts Collateral as follows: first, to pay any fees, indemnities or expense reimbursements then due to Revolving Administrative Agent or Revolving Lenders from Borrowers; second, to pay interest due in respect of any Loans; third, to pay principal due on any Loans made by Revolving Administrative Agent pursuant to Section 6.6 thereof; fourth, to pay principal due in respect of the Loans; fifth, to pay or prepay any other Revolving Obligations whether or not then due, in such order and manner as set forth in Section 10.2(i). Canadian Collateral Agent shall apply payments received or collected from Canadian Borrowers or for the account of Canadian Borrowers in respect of Canadian Accounts Collateral as follows: first, to pay any fees, indemnities or expense reimbursements then due to Canadian Collateral Agent or Canadian Lender from Canadian Borrowers; second, to pay interest due in respect of any Canadian Revolving Loans; third, to pay principal due on any Canadian Revolving Loans; fourth, to pay or prepay any other Canadian Obligations whether or not then due, in such order and manner as set forth in Section 10.2(k). Notwithstanding anything to the contrary contained in this Agreement, unless so directed by Borrowers, or unless a Default or an Event of Default shall exist or have occurred and be continuing, Revolving Lenders shall not apply any payments which they receive to any Eurodollar Rate Loans, except (A) on the expiration date of the Interest Period applicable to any such Eurodollar Rate Loans, or (B) in the event that there are no outstanding Prime Rate Loans.

(b) At Revolving Administrative Agent's option, all principal, interest and fees provided for in this Agreement or the other Financing Agreements may be charged directly to the loan account(s) of Borrowers. Except for such payments charged directly to the loan account(s) of Borrowers, Borrowers agree to pay all amounts due to be paid by them in accordance with this Agreement (including all costs and expenses) within ten days after receipt of an invoice therefore from Revolving Administrative Agent. Borrowers shall make all payments to Secured Parties on the Obligations free and clear of, and without deduction or withholding for or on account of, any setoff, counterclaim, defense, duties, taxes, levies, imposts, fees, deductions, withholding, restrictions or conditions of any kind. If after receipt of any payment of, or proceeds of Collateral applied to the payment of, any of the Obligations, any Secured Party is required to surrender or return such payment or proceeds to any Person for any reason, then the Obligations intended to be satisfied by such payment or proceeds shall be reinstated and continue and this Agreement shall continue in full force and effect as if such payment or proceeds had not been received. US Borrowers shall be liable to pay to Secured Parties, and each US Borrower

does hereby indemnify and hold each Secured Party harmless for the amount of any payments or proceeds surrendered or returned. Canadian Borrowers shall be liable to pay to Canadian Secured Parties, and each Canadian Borrower does hereby indemnify and hold each Canadian Secured Party harmless for the amount of any payments or proceeds surrendered or returned. This Section 6.4 shall remain effective notwithstanding any contrary action which may be taken by Lender in reliance upon such payment or proceeds. This Section 6.4 shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

(c) No payment to the Revolving Administrative Agent or any Revolving Lender shall discharge the Obligation in respect of which it was made unless and until the Revolving Administrative Agent or such Revolving Lender shall have received payment in full in the currency in which such Obligation was incurred, and to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such Obligation actual or contingent expressed in that currency, the applicable Borrowers jointly and severally agree to reimburse, indemnify and hold harmless the Revolving Administrative Agent or any Revolving Lender, as the case may be, with respect to the amount of the shortfall, with such indemnity surviving the termination of this Agreement.

(d) All valuations or computations of monetary amounts set forth in this Agreement shall include the US Dollar Equivalent of amounts in Canadian Dollars. In connection with all Dollar amounts set forth in this Agreement, and the Borrowing Base, US Borrowing Base and Canadian Borrowing Base calculations, all Canadian Dollars shall be marked to market on a (i) monthly basis as long as the Excess Availability with respect to Canadian Loans equals or exceeds US$5,000,000, (ii) weekly basis as long as the Excess Availability with respect to Canadian Loans exceeds US$2,000,000 but is less than US$5,000,000, and (iii) on a daily basis as long as the Excess Availability with respect to Canadian Loans is less than or equal to US$2,000,000, taking into account in each case the Dollar Equivalent of all Revolving Loans outstanding in Canadian Dollars.

6.5 Authorization To Make Loans .

(a) Each Agent and Lenders are authorized to make the Loans and provide the Revolving Letter of Credit Accommodations based upon telephonic or other instructions received from anyone purporting to be an authorized officer of Borrower Representative or other authorized person at the discretion of such Agent, if such Loans are necessary to satisfy any Obligations. All requests for Loans or Revolving Letter of Credit Accommodations hereunder shall be made to the Revolving Administrative Agent and shall specify the date on which the requested advance is to be made or Revolving Letter of Credit Accommodations established (which day shall be a Business Day) and the amount of the requested Loan. Requests received after 12:00 noon Boston, Massachusetts time on any day shall be deemed to have been made as of the opening of business on the immediately following Business Day. All Loans and Revolving Letter of Credit Accommodations under this Agreement shall be conclusively presumed to have been made to, and at the request of and for the benefit of, Credit Parties when deposited to the credit of Borrowers or otherwise disbursed or established in accordance with the instructions of any Borrower or in accordance with the terms and conditions of this Agreement.

(b) All Loans provided to US Borrowers shall be in or denominated in US Dollars and shall be disbursed only to bank accounts in the United States of America. All Loans provided to Canadian Borrowers shall be in or denominated in either Canadian Dollars or US Dollars as Canadian Borrowers may specify and shall be disbursed only to bank accounts in Canada; *provided*, *however*, that in connection with any Loans denominated in Canadian Dollars, the Revolving Administrative Agent shall determine, in accordance with the Exchange Rate in effect on the date of the making of any such Loan, the US Dollar equivalent of such Loan (the "Dollar Equivalent Amount"). Set forth on Schedule 6.5(b) are the bank accounts of each Borrower used by such Borrower for making payments of its Indebtedness and other obligations to which, as of the date hereof, proceeds of Loans may be disbursed.

6.6 Payment by Revolving Lenders and Settlement of Loans . Each US Revolving Lender shall, not later than 12:00 noon (Boston time) on any requested borrowing date, wire to a bank designated by Revolving Administrative Agent the amount of that US Revolving Lender's Pro Rata Share of the requested US Revolving Loan. The failure of any US Revolving Lender to make the Revolving Loans required to be made by it shall not release any other Revolving Lender of its obligations hereunder to make its Revolving Loan. Neither Revolving Administrative Agent nor any other Revolving Lender shall be responsible for the failure of any other Revolving Lender to make the Revolving Loan to be made by such other Revolving Lender. Unless the Revolving Administrative Agent has received notice from a Revolving Lender that such Revolving Lender does not intend to fund a Revolving Loan and the basis for such action prior to 12:00 noon on the Business Day prior to the date any Revolving Loan is to be made, Revolving Administrative Agent shall be entitled to assume that all Revolving Lenders will make Revolving Loans as required hereunder and to make such Revolving Loans to the US Borrowers. The foregoing notwithstanding, Revolving Administrative Agent, in its sole discretion, may from time to time make Revolving Loans on behalf of any or all Revolving Lenders including, without limitation, Revolving Loans with respect to Revolving Letter of Credit Accommodations that may be drawn. In such event, the Revolving Lenders on behalf of whom Revolving Administrative Agent made the Revolving Loans, shall reimburse Revolving Administrative Agent for the amount of such Revolving Loan made on its behalf, on a weekly (or more frequent, as determined by Revolving Administrative Agent in its sole discretion) basis. Settlements shall continue to occur during the continuance of a Default or an Event of Default and whether or not the applicable conditions precedent in Section 4 have been satisfied. On each such settlement date, each such Revolving Lender shall pay to Revolving Administrative Agent, the net amount owing to Revolving Administrative Agent in connection with such settlement, as determined by Revolving Administrative Agent, including without limitation, amounts relating to Loans, fees, interest and other amounts payable hereunder. If a Revolving Lender fails to pay the settlement amount due to Revolving Administrative Agent on the settlement date specified by Revolving Administrative Agent, such Revolving Lender shall pay to Revolving Administrative Agent on demand an amount equal to the product of (i) such amount times (ii)(A) the Federal Funds Rate during the period from and including the third day after such payment is required to be made, and (B) thereafter, the Interest Rate applicable to Prime Rate Loans to the date on which such payment is immediately available to Revolving Administrative Agent, times (iii) a fraction, the numerator of which is the number of days that elapsed from and including such settlement date to the date such settlement amount is immediately available to Revolving Administrative Agent and the denominator is 360. In addition to the foregoing, if the amount of any such Revolving

Lender's Pro Rata Share of such Revolving Loans is not made available to Revolving Administrative Agent on any settlement date, the Revolving Administrative Agent shall be entitled to recover such amount from the applicable Borrowers upon demand with interest thereon at the Interest Rate applicable to Prime Rate Loans.

6.7 Use of Proceeds; Use of LC Facility Letters of Credit . Borrowers shall use the initial proceeds of the Revolving Loans hereunder only: (a) to refinance existing indebtedness of Borrowers and pay the prepayment and defeasance costs in connection therewith and for fees, costs and expenses relating thereto and (b) for costs, expenses and fees in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Financing Agreements. All other Revolving Loans made or Revolving Letter of Credit Accommodations provided by Revolving Administrative Agent, Revolving Lenders and Reference Bank to Borrowers pursuant to the provisions hereof shall be used by Borrowers only for general operating, working capital and other proper corporate purposes of Borrowers not otherwise prohibited by the terms hereof. None of the proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any margin security or for the purposes of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might cause any extension of credit hereunder to be considered a "purpose credit" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, as amended.

6.8 Taxes.

(a) Any and all payments by or on behalf of any Borrower hereunder and under any other Financing Agreement shall be made free and clear of and without deduction for any and all Taxes, excluding the following (collectively, "**Excluded Taxes**"): (i) income taxes imposed on the net income of any Agent or any Lender (or any transferee or assignee of such Lender, including any Participant, any such transferee or assignee being referred to as a "**Transferee**") in the jurisdiction of such Agent's or such Lender's or such Transferee's applicable lending office or jurisdiction of organization or any political subdivision thereof, and (ii) franchise or similar taxes imposed on or determined by reference to the net income of Agents or any Lender (or Transferee), in each case by the jurisdiction under the laws of which such Lender (or Transferee) (A) is organized or any political subdivision thereof, (B) has its applicable lending office located or (C) is otherwise doing business. In addition, Borrowers agree to pay to the relevant Governmental Authority in accordance with applicable law any Other Taxes.

(b) If a Borrower shall be required by law to deduct or withhold in respect of any Taxes or Other Taxes (other than Excluded Taxes) from or in respect of any sum payable hereunder to Agents any Lender or any Transferee, then:

(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 6.8) such Lender, Agent or Transferee (or such Agent on behalf of such Lender or itself, as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made;

(ii) such Borrower shall make such deductions and withholdings;

(iii) such Borrower shall pay the full amount deducted or withheld to the relevant taxing authority or other authority in accordance with applicable law; and

(iv) to the extent not paid to Agents, Lenders or Transferees pursuant to clause (i) above, the applicable Borrowers shall also pay to any Agent, Lender or Transferee, at the time interest is paid, all additional amounts which any Agent, Lender or Transferee specifies as necessary to preserve the after-tax yield such Agent or Lender would have received if such Taxes or Other Taxes had not been imposed.

(c) Within thirty (30) days after the date of any payment by a Borrower of Taxes or Other Taxes, such Borrower shall furnish to the appropriate Administrative Agent the original or a certified copy of a receipt evidencing payment thereof, or other evidence of payment reasonably satisfactory to such Agent.

(d) Borrowers will indemnify each Agent and each Lender (or Transferee) for the full amount of Taxes and Other Taxes paid by such Agent or such Lender (or Transferee, as the case may be) whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant taxing authority. If such Agent or such Lender (or Transferee) determines in its sole discretion that it has received a refund in respect of any Taxes or Other Taxes for which such Agent or such Lender (or Transferee) has received payment from a Borrower hereunder, so long as no Default or Event of Default shall exist or have occurred and be continuing and Excess Availability in excess of such refund exists, such Agent or such Lender or Transferee (as the case may be) shall credit to the loan account of the applicable Borrower the amount of such refund (but only to the extent of indemnity payments made, or additional amounts paid, by or on behalf of such Borrower under this Section 6.8 with respect to the Taxes or Other Taxes giving rise to such refund) net of all out-of-pocket expenses of such Agent, Lender or Transferee (including any applicable Taxes as determined by such Agent, Lender or Transferee in its sole discretion) and without interest other than any interest paid by the relevant taxing authority with respect to such refund; *provided*, *however*, that such Borrower, upon the request of such Agent or such Lender (or Transferee), agrees to repay as soon as reasonably practicable the amount paid over to such Borrower (plus any penalties, interest or other charges imposed by the relevant taxing authority) to such Agent or such Lender (or Transferee) in the event such Agent or such Lender (or Transferee) is required to repay such refund to such taxing authority. This Section 6.8 shall not be construed to require any Agent or any Lender (or Transferee) to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrowers or any other person. The indemnity provided for herein shall survive the payment of the Obligations and the termination of this Agreement. A certificate as to the amount of such payment or liability and setting forth in reasonable detail the calculation and basis for such payment or liability delivered to Parent by a Lender or by an Agent on its own behalf or on behalf of a Lender, shall be conclusive, absent manifest error.

(e) Each Transferee of a US Lender or an Agent that is not a United States person within the meaning of Section 7701(a)(30) of the Code and that is a US Lender or claims indemnification or additional amounts under this Section 6.8 (a " **Non-U.S. Person**") shall deliver to Parent and the applicable Administrative Agent two (2) copies of the applicable United

States Internal Revenue Service Form W-8 wherein such Transferee claims entitlement to a complete exemption from U.S. federal income withholding tax on all payments by or on behalf of Parent under this Agreement and the other Financing Agreements. Such forms shall be delivered by any Non-U.S. Person receiving payments by or on behalf of Parent on or before the date it becomes a party to this Agreement (or, in the case of a Transferee that is a Participant, on or before the date such Participant becomes a Transferee hereunder) and on or before the date, if any, such Non-U.S. Person changes its applicable lending office by designating a different lending office (a "**New Lending Office**"). In addition, a Non-U.S. Person shall upon written notice from Parent promptly deliver such new forms as are required by the relevant Governmental Authority to claim exemption from, or reduction in the rate of, U.S. Federal income withholding tax upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Person. Each Lender and Agent that is a United States Person (other than a Lender or Agent that is a corporation or otherwise exempt from United States backup withholding Tax) shall deliver at the time(s) and in the manner(s) if and to the extent such delivery is required under applicable law, to Parent and the applicable Administrative Agent, a properly completed and duly executed United States Internal Revenue From W-9 or any successor form, certifying that such Person is exempt from United States backup withholding Tax on payments made by Parent hereunder. Notwithstanding any other provision of this Section 6.8(e), no Non-U.S. Person, Agent or Lender shall be required to deliver any form pursuant to this Section 6.8(e) that such Non-U.S. Person, Agent or Lender is not legally able to deliver.

(f) Borrowers shall not be required to indemnify any Person or to pay any additional amounts to any Person pursuant to subsections (b) or (d) above to the extent that (i) the Tax was applicable on the date such Person became a party to this Agreement (or, in the case of a Transferee that is a Participant, on the date such Participant became a Transferee hereunder) or, with respect to payments to a New Lending Office, the date such Person designated such New Lending Office with respect to a Loan, *provided* that this subsection (f) shall not apply (A) to any Transferee or New Lending Office that becomes a Transferee or New Lending Office as a result of an assignment, participation, transfer or designation made at the request or with the approval of any Borrower, and (B) to the extent the indemnity payment or additional amounts any Transferee, or New Lending Office would be entitled to receive (without regard to this subsection (f)) do not exceed the indemnity payment or additional amounts that the person making the assignment, participation or transfer to such Transferee or New Lending Office would have been entitled to receive in the absence of such assignment, participation, transfer or designation; or (ii) the obligation to pay such additional amounts would not have arisen but for a failure by such Person to comply with the provisions of subsection (e) above or the gross negligence or willful misconduct of such Person as determined pursuant to a final, non-appealable order of a court of competent jurisdiction.

(g) The provisions of this Section 6.8 shall survive the termination of this Agreement and the repayment of the Obligations.

SECTION 7. COLLATERAL REPORTING AND COLLATERAL COVENANTS.

7.1 Collateral Reporting.

(a) Credit Parties shall provide each Collateral Agent (with, upon such Collateral Agent's request, sufficient copies for the Lenders) with the following documents in a form satisfactory to such Collateral Agent, *provided* that if any such document is posted to an electronic data service available to each Collateral Agent and the Lenders at or before the time it is otherwise required to be delivered to each Collateral Agent, such document shall be deemed to have been provided for the purposes of this Section 7.1:

(i) on a regular basis as required by such Collateral Agent, a schedule of sales made, credits issued and cash received;

(ii) as soon as possible after the end of each month (but in any event within fifteen (15) days after the end thereof), on a monthly basis or more frequently as such Collateral Agent may request, (A) agings of accounts payable (and including information indicating the status of payments to owners and lessors of the leased premises of such Credit Parties) and (B) agings of accounts receivable (together with a reconciliation to the previous month's aging and general ledger);

(iii) upon such Collateral Agent's request, (A) copies of customer statements and credit memos, remittance advices and reports, and copies of deposit slips and bank statements, (B) copies of shipping and delivery documents, (C) copies of purchase orders, invoices and delivery documents for Inventory and Equipment acquired by Credit Parties, and (D) copies of Material Contracts entered into after the date hereof; and

(iv) such other reports as to the Collateral as such Collateral Agent, Majority Revolving Lenders or Majority LC Facility Lenders shall request from time to time.

(b) If any of Credit Parties' records or reports of the Collateral are prepared or maintained by an accounting service, contractor, shipper or other agent, each Credit Party hereby irrevocably authorizes such service, contractor, shipper or agent to deliver such records, reports, and related documents to either Collateral Agent and to follow such Collateral Agent's instructions with respect to further services at any time that an Event of Default exists or has occurred and is continuing.

(c) Accounts Collateral Agent shall be entitled to perform field examinations of all or any portion of the Accounts Collateral as frequently as it shall reasonably deem necessary; *provided* that so long as no Default or Event of Default has occurred and is continuing (x) if the amount outstanding under the US Revolving Loans is less than $5,000,000 or greater, such examinations shall not be more frequent than once per year and (y) if the amount outstanding under the US Revolving Loans is equal to or greater than $5,000,000, such examinations shall be no more frequent than once per fiscal quarter.

7.2 Accounts Covenants.

(a) Each US Credit Party shall notify the Accounts Collateral Agent and each Canadian Borrower shall notify the Canadian Collateral Agent promptly of: (i) any material delay in such Credit Party's performance of any of its obligations to any account debtor or the assertion of any claims, offsets, defenses or counterclaims by any account debtor, or any disputes with account debtors, or any settlement, adjustment or compromise thereof, (ii) all material adverse information relating to the financial condition of any account debtor, and (iii) any event or circumstance which, to such Credit Party's knowledge would cause the Revolving Administrative Agent to consider any then existing Accounts as no longer constituting Eligible Accounts. No credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor without Revolving Administrative Agent's consent, except in the ordinary course of Credit Parties' business in accordance with practices and policies previously disclosed in writing to Agent and except as set forth in the schedules delivered to Revolving Collateral Agent pursuant to Section 7.1(a) above. So long as no Event of Default exists or has occurred and is continuing, Credit Parties shall settle, adjust or compromise any claim, offset, counterclaim or dispute with any account debtor. At any time that an Event of Default exists or has occurred and is continuing, Revolving Administrative Agent shall, at its option, have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with account debtors or grant any credits, discounts or allowances.

(b) With respect to each Account: (i) the amounts shown on any invoice delivered to any Revolving Lender or schedule thereof delivered to the Revolving Administrative Agent shall be true and complete, (ii) no payments shall be made thereon except payments immediately delivered to any Revolving Lender pursuant to the terms of this Agreement, (iii) no credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor, (iv) there shall be no setoffs, deductions, contras, defenses, counterclaims or disputes existing or asserted with respect thereto except as reported to Revolving Administrative Agent in accordance with the terms of this Agreement, and (v) none of the transactions giving rise thereto will violate any applicable foreign, Federal, State, Provincial or local laws or regulations, all documentation relating thereto will be legally sufficient under such laws and regulations, and all such documentation will be legally enforceable in accordance with its terms.

(c) The Accounts Collateral Agent shall have the right at any time or times, to verify the validity, amount or any other matter relating to any Collateral, by mail, telephone, facsimile transmission or otherwise.

7.3 Power of Attorney.

(a) Each US Credit Party hereby irrevocably designates and appoints the Accounts Collateral Agent (and all persons designated by the Accounts Collateral Agent) as such Credit Party's true and lawful attorney-in-fact, and authorizes the Accounts Collateral Agent, in any US Credit Party's or the Accounts Collateral Agent's name, to: (a) at any time an Event of Default exists or has occurred and is continuing (i) demand payment on Receivables or other Accounts Collateral, (ii) enforce payment of Receivables by legal proceedings or otherwise, (iii) exercise all of each US Credit Party's rights and remedies to collect any Receivable or other Accounts Collateral, (iv) sell or assign any Receivable upon such terms, for such amount and at

such time or times as the Accounts Collateral Agent deems advisable, (v) settle, adjust, compromise, extend or renew an Account, (vi) discharge and release any Receivable, (vii) prepare, file and sign any such US Credit Party's name on any proof of claim in bankruptcy or other similar document against an account debtor or other obligor in respect of any Receivables or other Non-Accounts Collateral, (viii) notify the post office authorities to change the address for delivery of remittances from account debtors or other obligors in respect of Receivables or other proceeds of Accounts Collateral to an address designated by the Accounts Collateral Agent, and open and dispose of all mail addressed to any such US Credit Party and handle and store all mail relating to the Accounts Collateral; and (ix) do all acts and things which are necessary, in the Accounts Collateral Agent's determination, to fulfill US Credit Party's obligations under this Agreement and the other Financing Agreements, and (b) at any time to (i) take control in any manner of any item of payment in respect of Receivables or constituting Accounts Collateral or otherwise received in or for deposit in the US Blocked Accounts or otherwise received by the Accounts Collateral Agent, (ii) have access to any lockbox or postal box into which remittances from account debtors or other obligors in respect of Receivables or other proceeds of Accounts Collateral are sent or received, (iii) endorse any such US Credit Party's name upon any items of payment in respect of Receivables or constituting Accounts Collateral or otherwise received by Accounts Collateral Agent and deposit the same in Accounts Collateral Agent's account for application to the LC Facility Obligations, (iv) endorse any such US Credit Party's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Receivable or any goods pertaining thereto or any other Accounts Collateral, including any warehouse or other receipts, or bills of lading and other negotiable or non-negotiable documents, (v) clear Inventory the purchase of which was financed with Revolving Letter of Credit Accommodations through US Customs or foreign export control authorities in any US Credit Party's name, the Accounts Collateral Agent's name or the name of the Accounts Collateral Agent's designee, and to sign and deliver to customs officials powers of attorney in any US Credit Party's name for such purpose, and to complete in any US Credit Party's or the Accounts Collateral Agent's name, any order, sale or transaction, obtain the necessary documents in connection therewith and collect the proceeds thereof, and (vi) sign any US Credit Party's name on any verification of Receivables and notices thereof to account debtors or any secondary obligors or other obligors in respect thereof. Each US Credit Party hereby releases Accounts Collateral Agent and their respective officers, employees and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of omission or commission, except as a result of Accounts Collateral Agent's own gross negligence or willful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

(b) Each Canadian Borrower hereby irrevocably designates and appoints the Canadian Collateral Agent (and all persons designated by the Canadian Collateral Agent) as such Canadian Borrower's true and lawful attorney-in-fact, and authorizes the Canadian Collateral Agent, in any Canadian Borrower's or the Canadian Collateral Agent's name, to: (a) at any time an Event of Default exists or has occurred and is continuing (i) demand payment on Receivables or other Canadian Accounts Collateral, (ii) enforce payment of Receivables by legal proceedings or otherwise, (iii) exercise all of each Canadian Borrower's rights and remedies to collect any Receivable or other Canadian Accounts Collateral, (iv) sell or assign any Receivable upon such terms, for such amount and at such time or times as the Canadian Collateral Agent deems advisable, (v) settle, adjust, compromise, extend or renew an Account, (vi) discharge and release any

Receivable, (vii) prepare, file and sign any such Canadian Borrower's name on any proof of claim in bankruptcy or other similar document against an account debtor or other obligor in respect of any Receivables or other Canadian Accounts Collateral, (viii) notify the post office authorities to change the address for delivery of remittances from account debtors or other obligors in respect of Receivables or other proceeds of Canadian Accounts Collateral to an address designated by the Canadian Collateral Agent, and open and dispose of all mail addressed to any such Canadian Borrower and handle and store all mail relating to the Canadian Accounts Collateral; and (ix) do all acts and things which are necessary, in the Canadian Collateral Agent's determination, to fulfill Canadian Borrowers' obligations under this Agreement and the other Financing Agreements, and (b) at any time to (i) take control in any manner of any item of payment in respect of Receivables or constituting Canadian Accounts Collateral or otherwise received in or for deposit in the Canadian Blocked Accounts or otherwise received by the Canadian Collateral Agent, (ii) have access to any lockbox or postal box into which remittances from account debtors or other obligors in respect of Receivables or other proceeds of Canadian Accounts Collateral are sent or received, (iii) endorse any such Canadian Borrower's name upon any items of payment in respect of Receivables or constituting Canadian Accounts Collateral or otherwise received by Canadian Collateral Agent and deposit the same in Canadian Collateral Agent's account for application to the Canadian Obligations, (iv) endorse any such Canadian Borrower's name upon any Chattel Paper, Document, Instrument, invoice, or similar document or agreement relating to any Receivable or any goods pertaining thereto or any other Canadian Accounts Collateral, including any warehouse or other receipts, or bills of lading and other negotiable or non-negotiable documents, and (v) sign any Canadian Borrower's name on any verification of Receivables and notices thereof to account debtors or any secondary obligors or other obligors in respect thereof. Each Canadian Borrower hereby releases Canadian Collateral Agent and its officers, employees and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of omission or commission, except as a result of such Canadian Collateral Agent's own gross negligence or willful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

7.4 Right to Cure. Any Collateral Agent may, at its option, (a) upon notice to Parent, cure any default by any Credit Party under any agreement with a third party constituting part of the Collateral pledged to such Collateral Agent, their value or the ability of such Collateral Agent to collect, sell or otherwise dispose of the Collateral pledged to such Collateral Agent or the rights and remedies of such Collateral Agent therein or the ability of Borrowers to perform their obligations hereunder or under the other Financing Agreements, (b) pay or bond on appeal any judgment entered against any Credit Party, (c) discharge taxes, Liens, security interests or other encumbrances at any time levied on or existing with respect to the Collateral pledged to such Collateral Agent, and (d) pay any amount, incur any expense or perform any act which, in such Collateral Agent's judgment, is necessary or appropriate to preserve, protect, insure or maintain the Collateral pledged to such Collateral Agent and the rights of such Collateral Agent with respect thereto. Each Collateral Agent may add any amounts so expended to the applicable Obligations and charge the applicable Borrowers' account(s) therefor, such amounts to be repayable by the applicable Borrowers or on demand. No Collateral Agent shall be under any obligation to effect such cure, payment or bonding and shall not, by doing so, be deemed to have assumed any obligation or liability of any Borrower. Any payment made or other action taken by

any Collateral Agent under this Section 7.4 shall be without prejudice to any right to assert an Event of Default hereunder and to proceed accordingly.

7.5 Access to Premises. From time to time as requested by any Collateral Agent, at the cost and expense of the applicable Credit Parties, (a) such Collateral Agent or its designees shall have complete access to all of such Credit Party's premises during normal business hours and after notice to Credit Parties, for the purposes of inspecting, verifying and auditing the Collateral pledged to such Collateral Agent and all of such Credit Party's books and records, including the Records, and (b) Credit Parties shall promptly furnish to any Collateral Agent such copies of such books and records or extracts therefrom as such Collateral Agent may request, and (c) such Collateral Agent or its designee may use during normal business hours such of such Credit Party's personnel, equipment, supplies and premises as may be reasonably necessary for the foregoing and if an Event of Default exists or has occurred and is continuing for the realization of Collateral pledged to such Collateral Agent.

SECTION 8. REPRESENTATIONS AND WARRANTIES.

Each Credit Party hereby represents and warrants to Secured Parties the following (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which are a continuing condition of the making of Revolving Loans, providing LC Facility Letters of Credit and providing Revolving Letter of Credit Accommodations by Lenders to Credit Parties:

8.1 Corporate Existence; Power and Authority . Each Credit Party is a corporation, limited liability company, limited partnership or business trust duly organized and in good standing under the laws of its jurisdiction of incorporation or organization and is duly qualified as a foreign corporation, limited liability company, limited partnership or business trust and in good standing in all states, provinces or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification necessary, except for those jurisdictions in which the failure to so qualify would not have a Material Adverse Effect on any Credit Party's financial condition, results of operation or business or the rights of Secured Parties in or to any of the Collateral. The execution, delivery and performance of this Agreement, the other Financing Agreements and the transactions contemplated hereunder and thereunder (a) are all within each Credit Party's corporate, limited liability company, partnership or trust powers, (b) have been duly authorized, (c) are not in contravention of law or the terms of such Credit Party's certificate of incorporation, certificate of formation or certificate of limited partnership, by-laws, operating agreement, partnership agreement or declaration of trust, or other organizational documentation, or any indenture, agreement or undertaking to which any Credit Party is a party or by which any Credit Party or its property are bound, and (d) will not result in the creation or imposition of, or require or give rise to any obligation to grant, any Lien, security interest, charge or other encumbrance upon any property of any Credit Party (other than Liens on the Collateral created by the Financing Agreements). This Agreement and the other Financing Agreements constitute legal, valid and binding obligations of each Credit Party enforceable in accordance with their respective terms.

8.2 Name; State of Organization; Chief Executive Office; Collateral Locations .

(a) The exact legal name of each Credit Party is as set forth on the signature page of this Agreement and in the Perfection Certificate. No Credit Party has, during the past five years, been known by or used by any other corporate or fictitious name or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any of its property or assets, except as set forth in the Perfection Certificate.

(b) Each Credit Party is an organization of the type and organized in the jurisdiction set forth in the Perfection Certificate. The Perfection Certificate accurately sets forth the organizational identification number of each Credit Party or accurately states that a Credit Party has none and accurately sets forth the federal employer identification number of each Credit Party.

(c) The chief executive office and mailing address of each Credit Party and each Credit Party's books and records concerning the Collateral are located only at the address identified as such in Schedule 2(a) or (b) to the Perfection Certificate and its only other places of business and the only other locations of Collateral, if any, are the addresses set forth in Schedule 2(e) to the Perfection Certificate, subject to the right of Credit Parties to establish new locations in accordance with Section 9.2 below. The Perfection Certificate correctly identifies any of such locations which are not owned by Credit Parties and sets forth the owners and/or operators thereof.

8.3 Financial Statements; No Material Adverse Change; Fiscal Year .

(a) All financial statements relating to Credit Parties which have been or may hereafter be delivered by Credit Parties to any Secured Party have been prepared in accordance with GAAP (except as to any interim financial statements, to the extent such statements are subject to normal year-end adjustments and do not include any notes) and fairly present the financial condition and the results of operation of Credit Parties as at the dates and for the periods set forth therein. Except as disclosed in any interim financial statements furnished by Credit Parties to Secured Parties prior to the date of this Agreement, there has been no material adverse change in the assets, liabilities, properties and condition, financial or otherwise, of Credit Parties, since the date of the most recent audited financial statements furnished by Credit Parties to Secured Parties prior to the date of this Agreement.

(b) The fiscal year of each Borrower and its Subsidiaries ends on December 31 of each year.

8.4 Priority of Liens; Title to Properties.

(a) The security interests and Liens granted to Accounts Collateral Agent under this Agreement and the other Financing Agreements constitute valid and perfected first priority Liens and security interests in and upon the Accounts Collateral subject only to Liens permitted under Section 9.8 hereof.

(b) The security interests, hypothecs and Liens granted to Canadian Collateral Agent under this Agreement and the other Financing Agreements constitute valid and perfected first priority Liens and security interests and first ranking hypothecs in and upon the Canadian Accounts Collateral subject only to Liens permitted under Section 9.8 hereof.

(c) The security interests and Liens granted to LC Facility Collateral Agent under the Security Agreement and the other Financing Agreements constitute valid and perfected first priority Liens and security interests in and upon the Non-Accounts Collateral subject only to Liens permitted under Section 9.8 hereof.

(d) Each Credit Party has good and marketable fee simple title to or valid leasehold interests in all of its Real Property and good, valid and merchantable title to all of its other properties and assets subject to no Liens, mortgages, pledges, security interests, encumbrances or charges of any kind, except those granted to LC Facility Collateral Agent and such others as are permitted under Section 9.8 hereof.

8.5 Tax Returns. Each Credit Party has filed, or caused to be filed, in a timely manner all Tax returns, reports and declarations which are required to be filed by it. All information in such Tax returns, reports and declarations is complete and accurate in all material respects. Each Credit Party and each of its Subsidiaries has paid or caused to be paid all Taxes due and payable or claimed due and payable in any assessment received by it, except Taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Credit Parties (or their Subsidiaries) with respect to which adequate reserves have been set aside on its books. Adequate provision has been made for the payment of all accrued and unpaid Federal, State, Provincial, county, local, foreign and other Taxes whether or not yet due and payable and whether or not disputed.

8.6 Litigation. Except as set forth in Schedule 8.6, there is no present investigation by any Governmental Authority pending, or to the best of any Credit Party's knowledge threatened, against or affecting any Credit Party, its assets or business and there is no action, suit, proceeding or claim by any Person pending, or to the best of any Credit Party's knowledge threatened, against any Credit Party or its assets or goodwill, or against or affecting any transactions contemplated by this Agreement, which if adversely determined against any Credit Party would result in any material adverse change in the assets, business or prospects of any Credit Party or would impair the ability of any Credit Party to perform its obligations hereunder or under any of the other Financing Agreements to which it is a party or of Agent or Lenders to enforce any Obligations or realize upon any Collateral.

8.7 Compliance with Other Agreements and Applicable Laws . No Credit Party is in default in any material respect under, or in violation in any material respect of any of the terms of, any agreement, contract, instrument, lease or other commitment to which it is a party or by which it or any of its assets are bound and each Credit Party is in compliance in all material respects with all applicable provisions of laws, rules, regulations, licenses, permits, approvals and orders of any foreign, Federal, State, Provincial or local Governmental Authority.

8.8 Environmental Matters. Except as shown or reflected in the financial statements of Credit Parties previously furnished to each Administrative Agent and Lenders and to be

furnished to each Administrative Agent and Lenders under Section 9.6 or as set forth on Schedule 8.8, unless such matters would not have a Material Adverse Effect upon the business, assets or prospects of the Credit Parties on a consolidated basis or on the Collateral:

(a) No Credit Party or any Subsidiary has generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials, on or off its premises (whether or not owned by it) in any manner which at any time violates any applicable Environmental Law or any license, permit, certificate, approval or similar authorization thereunder and the operations of Credit Parties and their Subsidiaries comply with all Environmental Laws and all orders, licenses, permits, certificates, approvals and similar authorizations thereunder.

(b) There is no investigation, proceeding, complaint, order, directive, claim, citation or notice by any Governmental Authority or any other person pending, or to the best of Credit Parties' knowledge threatened, any non-compliance with or violation of any Environmental Law by Credit Parties and their Subsidiaries or the release, spill or discharge, threatened or actual, of any Hazardous Material at any properties at which or from which Credit Parties or their Subsidiaries has transported, stored or disposed of any Hazardous Materials, and all transportation, handling, processing and disposal of Hazardous Materials by Credit Parties and their Subsidiaries has been conducted in compliance with all applicable Environmental Laws.

(c) Credit Parties and their Subsidiaries have no material liability (contingent or otherwise) in connection with (i) a release, spill or discharge, threatened or actual, of any Hazardous Materials, (ii) the generation, use, storage, treatment, transportation, manufacture, handling, production, processing or disposal of any Hazardous Materials or (iii) any service or remediation performed by Credit Parties or their Subsidiaries at any location.

(d) Credit Parties and their Subsidiaries have all licenses, permits, certificates, approvals or similar authorizations required to be obtained or filed in connection with the operations of Credit Parties and their Subsidiaries under any Environmental Law and all of such licenses, permits, certificates, approvals or similar authorizations are valid and in full force and effect.

(e) No liens have been recorded with respect to any Collateral under any Environmental Law.

(f) No Borrower or any Subsidiary is conducting any investigation, remediation, response or corrective action at any location pursuant to any Environmental Law.

(g) There are no past or present occurrences, conditions, activities or events that could reasonably be expected to prevent Borrower or any Subsidiary from compliance with, or result in liability under, any applicable Environmental Law.

8.9 Employee Benefits.

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state law. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service and to the best of Credit Parties' knowledge, nothing has occurred which would cause the loss of such qualification. Each Credit Party and its ERISA Affiliates have made all required contributions to any Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or to the best of Credit Parties' knowledge, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) the current value of each Plan's assets (determined in accordance with the assumptions used for funding such Plan pursuant to Section 412 of the Code) are not less than such Plan's liabilities under Section 4001(a)(16) of ERISA; (iii) Credit Parties and their ERISA Affiliates have not incurred and do not reasonably expect to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) Credit Parties and their ERISA Affiliates have not incurred and do not reasonably expect to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) Credit Parties and their ERISA Affiliates have not engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

(d) With respect to any Canadian Pension Plan, if and to the extent that any such Canadian Pension Plan exists or has not been terminated, (i) the Canadian Pension Plans are duly registered under all applicable Federal and Provincial pension benefits legislation, (ii) all obligations of any Credit Party (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans or the funding agreements therefor have been performed in a timely fashion and there are no outstanding disputes concerning the assets held pursuant to any such funding agreement, (iii) all contributions or premiums required to be made by any Credit Party to the Canadian Pension Plans have been made in a timely fashion in accordance with the terms of the Canadian Pension Plans and applicable laws and regulations, (iv) all employee contributions to the Canadian Pension Plans required to be made by way of authorized payroll deduction have been properly withheld by any Credit Party and fully paid into the Canadian Pension Plans in a timely fashion, (v) all reports and disclosures relating to the Canadian Pension Plans required by any applicable laws or regulations have been filed or distributed in a timely fashion, (vi) there have been no improper withdrawals, or applications of, the assets of any of the Canadian Pension Plans, (vii) no amount is owing by any of the Canadian Pension Plans under the Income Tax Act (Canada) or any provincial taxation statute, (viii) the Canadian Pension Plans are fully funded both on an ongoing basis and on a solvency basis (using actuarial assumptions and methods which are consistent with the

valuations last filed with the applicable governmental authorities and which are consistent with generally accepted actuarial principles), and (ix) to the best of the knowledge of each Credit Party none of the Canadian Pension Plans is the subject of an investigation, any other proceeding, an action or a claim and there exists no state of facts which after notice or lapse of time or both could reasonably be expected to give rise to any such proceeding, action or claim.

8.10 Bank Accounts. All of the Deposit Accounts, investment accounts or other accounts in the name of or used by any Credit Party maintained at any bank or other financial institution are set forth in the Perfection Certificate, subject to the right of Credit Parties to establish new accounts in accordance with Section 5.3 hereof and Section 5.4 hereof and the Security Agreement.

8.11 Intellectual Property. Each Credit Party owns or licenses or otherwise has the right to use all Intellectual Property necessary for the operation of its business as presently conducted or proposed to be conducted. As of the date hereof, no Credit Party has any Intellectual Property registered, or subject to pending applications, in the United States Patent and Trademark Office, the Canadian Intellectual Property Office or any similar office or agency in the United States, or Canada, any State or Province thereof, any political subdivision thereof or in any other country, other than those described in Schedule 8.11 hereto and has not granted any licenses with respect thereto other than as set forth in Schedule 8.11. No event has occurred which permits or would permit after notice or passage of time or both, the revocation, suspension or termination of such rights. To the best of Credit Parties' knowledge, no slogan or other advertising device, product, process, method, substance or other Intellectual Property or goods bearing or using any Intellectual Property presently contemplated to be sold by or employed by any Credit Party infringes any patent, trademark, servicemark, tradename, copyright, license or other Intellectual Property owned by any other Person presently and no claim or litigation is pending or threatened against or affecting any Credit Party contesting its right to sell or use any such Intellectual Property. Schedule 8.11 sets forth all of the agreements or other arrangements of Credit Parties pursuant to which any Credit Party has a license or other right to use any trademarks, logos, designs, representations or other Intellectual Property owned by another person as in effect on the date hereof and the dates of the expiration of such agreements or other arrangements of any Credit Party as in effect on the date hereof (collectively, together with such agreements or other arrangements as may be entered into by any Credit Party after the date hereof, collectively, the " **License Agreements**" and individually, a "**License Agreement**"). No trademark, servicemark or other Intellectual Property at any time used by any Credit Party which is owned by another person, or owned by any Credit Party subject to any security interest, Lien, collateral assignment, pledge or other encumbrance in favor of any person other than Lender, is affixed to any Inventory, except to the extent permitted under the term of the License Agreements listed on Schedule 8.11.

8.12 Subsidiaries; Affiliates; Capitalization.

(a) No Credit Party has any direct or indirect Subsidiaries or Affiliates and is engaged in any joint venture or partnership except as set forth in Schedule 8.12, subject to the right of the Credit Parties to form or acquire Subsidiaries in accordance with Section 9.10 hereof.

(b) Credit Parties are the record and beneficial owners of all of the issued and outstanding shares of Capital Stock of the each of the Subsidiaries listed on Schedule 8.12 as being owned by Credit Parties and there are no proxies, irrevocable or otherwise, with respect to such shares and no equity securities of any of the Subsidiaries are or may become required to be issued by reason of any options, warrants, rights to subscribe to, calls or commitments of any kind or nature and there are no contracts, commitments, understandings or arrangements by which any Subsidiary is or may become bound to issue additional shares of it Capital Stock or securities convertible into or exchangeable for such shares.

(c) The issued and outstanding shares of Capital Stock of each Credit Party are directly and beneficially owned and held by the persons indicated in the Perfection Certificate, and in each case all of such shares have been duly authorized and are fully paid and non-assessable, free and clear of all claims, Liens, pledges and encumbrances of any kind, except (i) Liens permitted by Section 9.8, and (ii) to the extent that the laws of the jurisdictions in which certain of the Foreign Subsidiaries are organized provide that such shares of Capital Stock are assessable under certain circumstances.

8.13 Labor Union Matters.

(a) Set forth on Schedule 8.13 is a list (including dates of termination) of all collective bargaining or similar agreements between or applicable to any Credit Party and any union, labor organization or other bargaining agent in respect of the employees of any Credit Party on the date hereof.

(b) There is (i) no significant unfair labor practice complaint pending against any Credit Party or, to the best of Credit Parties' knowledge, threatened against any Credit Party, before the National Labor Relations Board, (ii) no significant grievance or significant arbitration proceeding arising out of or under any collective bargaining agreement is pending on the date hereof against any Credit Party or, to best of Credit Parties' knowledge, threatened against any Credit Party, and (iii) no significant strike, labor dispute, slowdown or stoppage is pending against any Credit Party or, to the best of Credit Parties' knowledge, threatened against any Credit Party.

8.14 Trade Relations. There exists no actual or threatened termination, cancellation or limitation of, or any modification or change in, the business relationship between any Credit Party or any of its Subsidiaries and any customer or any group of customers whose purchases individually or in the aggregate are material to the business of any Credit Party or any of its Subsidiaries, or with any material supplier, and there exists no present condition or state of facts or circumstances which would materially affect adversely any Credit Party or any of its Subsidiaries or prevent any Credit Party or any of its Subsidiaries from conducting such business after the consummation of the transaction contemplated by this Agreement in substantially the same manner in which it has heretofore been conducted.

8.15 Restrictions on Subsidiaries. Except for restrictions contained in this Agreement or any other agreement with respect to Indebtedness of Credit Parties permitted hereunder as in effect on the date hereof, there are no contractual or consensual restrictions on any Credit Party or any of their Subsidiaries which prohibit or otherwise restrict (a) the transfer of cash or other

assets (i) between any Credit Party and any of its Subsidiaries or (ii) between any Subsidiaries of Credit Parties or (b) the ability of any Credit Party or any of their Subsidiaries to incur Indebtedness or grant security interests to Lender in the Collateral.

8.16 Material Contracts. Schedule 8.16 sets forth all Material Contracts to which any Credit Party is a party or is bound as of the date hereof. Credit Parties have delivered true, correct and complete copies of such Material Contracts to Agent on or before the date hereof. Except as would not have a Material Adverse Effect, Credit Parties are not in breach of or in default under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract.

8.17 Payable Practices. Credit Parties have not made any material change in the historical accounts payable practices from those in effect immediately prior to the date hereof.

8.18 Investment Company. None of the Credit Parties or any Subsidiary (i) is a "holding company," or a "subsidiary company" of a "holding company," or an "affiliate of a "holding company" or of a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935, or (ii) is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

8.19 Interdependent Businesses and Operations. Each of the operations and businesses of each Credit Party is interdependent with the other Credit Parties and each Credit Party substantially relies on the other Credit Parties in its operations and business. Each Credit Party will derive substantial direct and indirect benefits from the Loans, Revolving Letter of Credit Accommodations and LC Facility Letters of Credit made and to be made by Administrative Agents and Lenders hereunder. Each Credit Party's access to the financing provided hereunder significantly enhances its own financial condition and business prospects and the Credit Parties acknowledge that the financing provided hereunder would only be available on a joint and several basis among all the Credit Parties to the extent provided in Section 14 hereof.

8.20 Accuracy and Completeness of Information. All information furnished by or on behalf of Credit Parties in writing to Agents and/or Lenders in connection with this Agreement or any of the other Financing Agreements or any transaction contemplated hereby or thereby, including all information on the Perfection Certificate is true and correct in all material respects on the date as of which such information is dated or certified and does not omit any material fact necessary in order to make such information not misleading. No event or circumstance has occurred which has had or could reasonably be expected to have a Material Adverse Effect on the business, assets or prospects of any Credit Party, which has not been fully and accurately disclosed to Agents and Lenders in writing.

8.21 Anti-Terrorism Law.

(a) No Credit Party and, to the knowledge of the Credit Parties, none of their Affiliates is in violation of any laws relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the " **Order**"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) No Credit Party and to the knowledge of the Credit Parties, no Affiliate or broker or other agent of any Credit Party acting or benefiting in any capacity in connection with the Loans, the Revolving Letter of Credit Accommodations or the LC Facility Letters of Credit is any of the following:

(i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Order;

(ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Order;

(iii) a person with which any Secured Party is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Order; or

(v) a person that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control ("**OFAC**") at its official website or any replacement website or other replacement official publication of such list.

(c) No Credit Party and, to the knowledge of the Credit Parties, no broker or other agent of any Credit Party acting in any capacity in connection with the Loans, the Revolving Letter of Credit Accommodations or LC Facility Letters of Credit (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

8.22 [Intentionally Omitted].

8.23 Properties.

(a) Each Credit Party has good title to, or valid leasehold interests in, all its property material to its business, free and clear of all Liens except for Liens permitted by Section 9.8 and minor irregularities or deficiencies in title that, individually or in the aggregate, do not interfere with its ability to conduct its business as currently conducted or to utilize such property for its intended purpose. The property of the Credit Parties, taken as a whole, (i) is in good operating order, condition and repair (ordinary wear and tear excepted), except to the extent that the failure to be in such condition could not reasonably be expected to result in a Material Adverse Effect, and (ii) constitutes all the property which is required for the business and operations of the Credit Parties as presently conducted.

(b) Schedule 8.23(b) contains a true and complete list of each interest in Real Property (i) owned by any Credit Party as of the date hereof and describes the type of interest therein held by such Credit Party and (ii) leased, subleased or otherwise occupied or utilized by any Credit Party, as lessee, sublessee, franchisee or licensee, as of the date hereof and describes the type of interest therein held by such Credit Party and whether such lease, sublease or other instrument requires the consent of the landlord thereunder or other parties thereto to the Transactions.

(c) No Credit Party has received any notice of, nor has any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting all or any portion of its property. No mortgage encumbers improved Real Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the National Flood Insurance Act of 1968 unless flood insurance available under such Act has been obtained in accordance with Section 9.5.

(d) Each Credit Party owns or has rights to use all of the Collateral, other property and all rights with respect to any of the foregoing used in, necessary for or material to such Credit Party's business as currently conducted. The use by each Credit Party of such Collateral, other property and all such rights with respect to the foregoing do not infringe on the rights of any person other than such infringement which could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No claim has been made and remains outstanding that any Credit Party's use of any Collateral or other property does or may violate the rights of any third party that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

8.24 Solvency. Immediately after the Refinancing on and immediately following the making of each Loan and after giving effect to the application of the proceeds of each Loan, (a) the fair value of the properties of each Credit Party (individually and on a consolidated basis with its Subsidiaries) will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of each Credit Party (individually and on a consolidated basis with its Subsidiaries) will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) each Credit Party (individually and on a consolidated basis with its Subsidiaries) will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) each Credit Party (individually and on a consolidated basis with its Subsidiaries) will not have unreasonably small capital with which to conduct its business in which it is engaged as such business is now conducted and is proposed to be conducted following the Effective Date.

8.25 Disclosure. Neither this Agreement nor any other document, certificate or statement furnished to any Secured Party by or on behalf of any Credit Party in connection herewith (including, without limitation, the Information Memorandum) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained herein and therein not misleading, in light of the circumstances under which they were made; *provided* that to the extent this or any such document, certificate or statement (including without limitation the Information Memorandum) was based upon or constitutes a forecast or

projection, the Credit Parties represent only that they acted in good faith and utilized reasonable assumptions and due care in the preparation of such document, certificate or statement.

8.26 Projections. The Credit Parties have furnished to the Agents and the Lenders prior to the Effective Date pro forma consolidated income statement projections for Parent, pro forma consolidated balance sheet projections for Parent and pro forma consolidated cash flow projections for Parent, all for the fiscal years ending 2004 through 2009, inclusive (the "**Projected Financial Statements**"), which give effect to the Refinancing and all Indebtedness and Liens incurred or created in connection with the Refinancing. The assumptions made in preparing the Projected Financial Statements are reasonable as of the date of such projections and all material assumptions with respect to the Projected Financial Statements are set forth therein. The Projected Financial Statements present a good faith estimate of the consolidated financial information contained therein at the date thereof.

8.27 Government Approval, Regulation, Etc. No consent, authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other Person is required for the due execution, delivery or performance by the Credit Parties of this Agreement or by any Credit Party of any other Financing Agreement, the issuance of LC Facility Letters of Credit hereunder, the borrowing of the Loans, the use of the proceeds thereof, the issuance of Revolving Letter of Credit Accommodations hereunder, the borrowing of the Canadian Revolving Loans, the use of the proceeds thereof, except such as have been obtained or made and are in full force and effect and except filings and registrations necessary to perfect Liens under the Security Documents. No Credit Party or Secured Party is an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or a "holding company", or a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company", within the meaning of the Public Utility Holding Company Act of 1935, as amended.

8.28 Validity, Etc. This Agreement has been duly executed and delivered by the Credit Parties and upon execution and delivery of the other Financing Agreements to which any Credit Party is a party, such Financing Agreements will have been duly executed and delivered by such Credit Party. This Agreement constitutes, and each other Financing Agreement to which any Credit Party is to be a party will, upon the due execution and delivery thereof and assuming the due execution and delivery of this Agreement by each of the other parties hereto, constitute, the legal, valid and binding obligation of each Credit Party that is a party hereto or thereto, enforceable in accordance with the respective terms hereof and thereof, subject to the effect of bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforceability of creditors' rights generally and to general principles of equity.

8.29 Regulations T, U and X. The Loans, the use of the proceeds thereof, this Agreement and the transactions contemplated hereby will not result in a violation of or be inconsistent with any provision of Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation of such Board or to violate the Exchange Act.

8.30 Survival of Warranties; Cumulative. All representations and warranties contained in this Agreement or any of the other Financing Agreements shall survive the execution

and delivery of this Agreement and shall be deemed to have been made again to Lender on the date of each additional borrowing or other credit accommodation hereunder and shall be conclusively presumed to have been relied on by Agents and Lenders regardless of any investigation made or information possessed by Agents or Lenders. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which Credit Parties shall now or hereafter give, or cause to be given, to any Agent.

SECTION 9. AFFIRMATIVE AND NEGATIVE COVENANTS.

9.1 Maintenance of Existence.

(a) Credit Parties shall at all times preserve, renew and keep in full, force and effect their corporate, limited liability company, partnership or business trust, as the case may be, existence and all rights and franchises with respect thereto and maintain in full force and effect all permits, licenses, trademarks, tradenames, approvals, authorizations, leases and contracts necessary to carry on the businesses as presently or proposed to be conducted by Credit Parties.

(b) No Credit Party shall change its name unless each of the following conditions is satisfied: (i) each Administrative Agent shall have received not less than thirty (30) days' prior written notice from a Credit Party of such proposed change in its name, which notice shall accurately set forth the new name; and (ii) prior to the filing thereof, each Administrative Agent shall have received a copy of the proposed amendment to the certificate of incorporation, certificate of formation or certificate of limited partnership or equivalent document, as the case may be, of such Credit Party providing for the name change and once the filing has been made, each Administrative Agent shall receive a copy of such amendment to the certificate of incorporation, certificate of formation or certificate of limited partnership or equivalent document, as the case may be, of such Credit Party certified by the Secretary of State of the jurisdiction of incorporation or organization of such Credit Party as soon as it is available.

(c) No Credit Party shall change its chief executive office or its mailing address or organizational identification number (or if it does not have one, shall not acquire one) unless each Collateral Agent (except that the Canadian Borrowers shall only be required to provide notice to the Canadian Collateral Agent) shall have received not less than thirty (30) days' prior written notice (or such shorter period as the Collateral Agents may consent to) from Credit Parties of such proposed change, which notice shall set forth such information with respect thereto as such Collateral Agents may require and such Collateral Agents shall have received such agreements as such Collateral Agents may reasonably require in connection therewith in order to preserve and protect their respective Liens on the Collateral. No Credit Party shall change its type of organization, jurisdiction of organization or other legal structure.

9.2 New Collateral Locations. Credit Parties may only open any new location within the continental United States or Canada provided Credit Parties (a) give each Collateral Agent thirty (30) days prior written notice (or such shorter notice as may be consented to by each Collateral Agent and except that the Canadian Borrowers shall only be required to provide notice to the Canadian Collateral Agent) from Credit Parties of the intended opening of any such new location, and (b) execute and deliver, or causes to be executed and delivered, to each Collateral

Agent such agreements, documents, and instruments as such Collateral Agent may deem necessary or desirable to protect its respective interests in the Collateral at such location.

9.3 Compliance with Laws, Regulations, Etc .

(a) Credit Parties shall, and shall cause their Subsidiaries to, at all times, comply in all material respects with all laws, rules, regulations, licenses, permits, approvals and orders applicable to it and duly observe all requirements of any foreign, Federal, State, Provincial or local Governmental Authority, including ERISA, the Code, the Fair Labor Standards Act of 1938, as amended, and all Environmental Laws if the failure to so comply could result in the imposition of material fines or penalties or result in the revocation or termination of any material license, permit, order or approval of any Governmental Authority or could otherwise materially and adversely affect the business, assets or prospects of Credit Parties on a consolidated basis.

(b) Credit Parties shall give written notice to each Administrative Agent immediately upon any Credit Party's receipt of any notice of, or any Credit Party's otherwise obtaining knowledge of, any of the following which could result in the imposition of material fines or penalties or the revocation or termination of any material license, permit, order or approval of any Governmental Authority or could otherwise materially and adversely affect the business, assets or prospects of Credit Parties on a consolidated basis, (i) the occurrence of any event involving the release, spill or discharge, threatened or actual, of any Hazardous Material or (ii) any investigation, proceeding, complaint, order, directive, claims, citation or notice with respect to: (A) any non-compliance with, violation of or liability under any applicable Environmental Law by any Credit Party or (B) the release, spill or discharge, threatened or actual, of any Hazardous Material. Credit Parties shall take prompt and appropriate action to respond to any such non-compliance or potential liability with any Environmental Laws and shall regularly report to each Administrative Agent on such response. Copies of all environmental surveys, audits, assessments, feasibility studies, results of remedial investigations and other related information reasonably requested by either Administrative Agent shall be promptly furnished, or caused to be furnished, by Credit Parties to each Administrative Agent.

(c) Without limiting the generality of the foregoing, whenever either Administrative Agent reasonably determines that there is non-compliance, or any condition which requires any action by or on behalf of Credit Parties in order to avoid any non-compliance with or liability under any Environmental Law which, in either case, could reasonably be expected to have a Material Adverse Effect, Credit Parties shall, at such Administrative Agent's request and Credit Parties' expense: (i) cause an independent environmental consultant acceptable to such Administrative Agent to conduct such assessments and tests of the property and/or facility where Credit Parties' non-compliance or alleged non-compliance has occurred or conditions exist as deemed necessary to evaluate the nature, extent and costs to address the matter and prepare and deliver to such Administrative Agent a report setting forth the results and a proposed plan for response or corrective action, and an estimate of the costs thereof, and (ii) provide to such Administrative Agent a supplemental report whenever the scope of the matter, or Credit Parties' response thereto or the estimated costs thereof, shall change in any material respect.

(d) Credit Parties shall indemnify and hold harmless each Secured Party, and each of their respective directors, officers, employees, agents, invitees, representatives, successors

and assigns, from and against any and all losses, claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees and legal expenses) arising out of or attributable to the use, generation, manufacture, handling, recycling, storage, treatment, release, threatened release, spill, discharge, disposal or presence of a Hazardous Material, including the costs of any required or necessary repair, cleanup or other remedial work, on, at, under or from current or former facility or property owned or operated by Credit Parties and the preparation and implementation of any closure, remedial or other required plans unless and only if the result of the gross negligence or willful misconduct of the indemnified party. This indemnification shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

9.4 Payment of Taxes and Claims. Credit Parties shall, and shall cause any Subsidiary to, duly pay and discharge all taxes, assessments, contributions and governmental charges upon or against it or its properties or assets, except for taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Credit Parties or such Subsidiary, as the case may be, and with respect to which adequate reserves have been set aside on its books. Credit Parties shall be liable for any tax or penalties withheld from or imposed on any Secured Party as a result of the financing arrangements provided for herein and Credit Parties agree to indemnify and hold each Secured Party harmless with respect to the foregoing, and to repay to each Secured Party on demand the amount thereof, and until paid by Credit Parties such amount shall be added and deemed part of the Obligations. The foregoing indemnity shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

9.5 Insurance. Credit Parties shall, and shall cause each Subsidiary of any Credit Party to, at all times, maintain with financially sound and reputable insurers insurance with respect to the Collateral against loss or damage and all other insurance of the kinds and in the amounts customarily insured against or carried by corporations of established reputation engaged in the same or similar businesses and similarly situated. Said policies of insurance shall be satisfactory to each Collateral Agent as to form, amount and insurer. Credit Parties shall furnish certificates, policies or endorsements to each Collateral Agent as such Collateral Agent shall require as proof of such insurance, and, if Credit Parties fail to do so, such Collateral Agent is authorized, but not required, to obtain such insurance at the expense of Credit Parties. All policies shall provide for at least thirty (30) days prior written notice to each Collateral Agent of any cancellation or reduction of coverage and that such Collateral Agent may act as attorney for Credit Parties in obtaining, and at any time a Default or an Event of Default exists or has occurred and is continuing, adjusting, settling, amending and canceling such insurance. Credit Parties shall cause (i) the LC Facility Collateral Agent to be named as a loss payee and an additional insured with respect to the LC Facility Collateral (ii) the Accounts Collateral Agent to be named as loss payee and an additional insured with respect to the Accounts Collateral and (iii) the Canadian Collateral Agent to be named as loss payee and an additional insured with respect to Canadian Accounts Collateral (each without any liability for any premiums) under such insurance policies and Credit Parties shall obtain non-contributory lender's loss payable endorsements to all insurance policies in form and substance satisfactory to such Collateral Agent. Such lender's loss payable endorsements shall specify that the proceeds of such insurance shall be payable to such Collateral Agent as its interests may appear and further specify that such Collateral Agent shall be paid regardless of any act or omission by a Credit Party or any of its Affiliates. At its option,

such Collateral Agent may apply any insurance proceeds received by such Collateral Agent at any time to the cost of repairs or replacement of Collateral and/or to payment of the Obligations, whether or not then due, in any order and in such manner as such Collateral Agent may determine or hold such proceeds as cash collateral for the Obligations.

9.6 Financial Statements and Other Information.

(a) Credit Parties shall, and shall cause each Subsidiary of any Credit Party to, keep proper books and records in which true and complete entries shall be made of all dealings or transactions of or in relation to the Collateral and the business of Credit Parties and their Subsidiaries in accordance with GAAP. Credit Parties shall promptly furnish to each Administrative Agent and Lenders all such financial and other information as such Administrative Agent shall reasonably request relating to the Collateral and the assets, business and operations of Credit Parties, and to notify the auditors and accountants of Parent that such Administrative Agent is authorized to obtain such information directly from them. Without limiting the foregoing, Credit Parties shall furnish or cause to be furnished to each Administrative Agent and each Lender, the following: (i) within thirty (30) days after the end of each fiscal month, monthly unaudited consolidated financial statements (including in each case balance sheets and statements of income and loss), all in reasonable detail, fairly presenting the financial position and the results of the operations of Parent and its Subsidiaries as of the end of and through such fiscal month, certified to be correct by the chief financial officer of Parent, subject to normal year-end adjustments, (ii) within forty-five (45) days after the end of each fiscal quarter, quarterly unaudited consolidated financial statements (including in each case balance sheets, statements of income and loss, and statements of cash flow), all in reasonable detail, fairly presenting the financial position and the results of operations of Parent and its Subsidiaries as of the end of and through such fiscal quarter, certified to be correct by the chief financial officer of Parent, subject to normal year-end adjustments and accompanied by a compliance certificate substantially in the form of Exhibit B hereto together with a schedule in form reasonably satisfactory to such Administrative Agent of the calculations used in determining whether Parent was in compliance with the covenants set forth in Sections 9.17, 9.18, 9.19 and 9.20 of this Agreement for such fiscal quarter or fiscal year; (iii) within ninety (90) days after the end of each fiscal year, audited consolidated financial statements of Parent and its Subsidiaries (including in each case balance sheets, statements of income and loss, statements of cash flow and statements of shareholders' equity), and the accompanying notes thereto, all in reasonable detail, fairly presenting the financial position and the results of the operations of Parent and its Subsidiaries as of the end of and for such fiscal year, together with the unqualified opinion of independent certified public accountants, which accountants shall be an independent accounting firm selected by Parent and reasonably acceptable to such Administrative Agent, that such financial statements have been prepared in accordance with GAAP, and present fairly the results of operations and financial condition of Parent, and its Subsidiaries as of the end of and for the fiscal year then ended, together with a compliance certificate in the form of Exhibit B hereto together with a schedule in form reasonably satisfactory to such Administrative Agent of the calculations used in determining whether Parent was in compliance with the covenants set forth in Sections 9.17, 9.18, 9.19 and 9.20 of this Agreement for such fiscal quarter or fiscal year.

(b) Credit Parties shall promptly notify each Administrative Agent in writing of the details of (i) any loss, damage, investigation, action, suit, proceeding or claim relating to the Collateral or any other property which is security for the Obligations or which would result in any material adverse change in any Credit Party's business, properties, assets, goodwill or condition, financial or otherwise, (ii) any Material Contract of any Credit Party being terminated or amended or any new Material Contract entered into (in which event Credit Parties shall provide such Administrative Agent with a copy of such Material Contract), (iii) any order, judgment or decree in excess of $500,000 in any one case or in the aggregate shall have been entered against any Credit Party or any of its properties or assets, (iv) any notification of violation of laws or regulations received by any Credit Party, (v) any ERISA Event, and (vi) the occurrence of any Default or Event of Default.

(c) Credit Parties shall promptly after the sending or filing thereof furnish or cause to be furnished to Lender copies of all reports which Parent sends to its stockholders generally and copies of all reports and registration statements which Parent files with the Securities and Exchange Commission, any national securities exchange or the National Association of Securities Dealers, Inc.

(d) Credit Parties shall furnish or cause to be furnished to each Administrative Agent and Lenders prior to January 15 of each year of Parent, a budget in form reasonably satisfactory to such Administrative Agent (including budgeted statements of income for the Credit Parties' business units and sources and uses of cash and balance sheets) for each of the following five fiscal years (prepared on a quarterly basis for the current fiscal year) prepared in summary form, in each case with appropriate presentation and discussion of the principal assumptions upon which such budgets are based, accompanied by the statement of a financial officer of Parent to the effect that the budget is a reasonable estimate for the period covered thereby and such other budgets, forecasts, projections and other information respecting the Collateral and the business of Credit Parties, as such Administrative Agent may, from time to time, reasonably request. Each Administrative Agent and each Lender are hereby authorized to deliver a copy of any financial statement or any other information relating to the business of Credit Parties to any court or other Governmental Authority or to any participant or assignee or prospective participant or assignee of any Lender. At any time that either Administrative Agent reasonably requests the Credit Parties shall deliver, at their expense, copies of the financial statements of Credit Parties and any reports or management letters prepared by the accountants or auditors to the Credit Parties and to deliver to such Administrative Agent and to each Lender such information as may reasonably be requested. Credit Parties shall permit the Revolving Lenders, through the Revolving Administrative Agent or any of the Revolving Lenders' other designated representatives, to visit and inspect any of the properties of the Credit Parties or any of their Subsidiaries, to examine the books of account of the Credit Parties and their Subsidiaries (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Credit Party and its Subsidiaries with, and to be advised as to the same by, its and their officers, and to conduct examinations and verifications (whether by internal commercial finance examiners or independent auditors) of all components included in the Borrowing Base, all at such reasonable times and intervals as the Revolving Administrative Agent or any Revolving Lender may reasonably request.

9.7 Sale of Assets, Consolidation, Merger, Dissolution, Etc. Credit Parties shall not, and shall not permit any Subsidiary to, directly or indirectly,

(a) merge into or consolidate or amalgamate with any other Person or permit any other Person to merge into or consolidate with it (except that any Credit Party (other than the Parent) may be merged into, consolidated with, or amalgamated with any other Credit Party and any wholly-owned Subsidiary of any Credit Party may be merged into such Credit Party); or

(b) sell, assign, issue, lease, transfer, abandon or otherwise dispose of any Capital Stock or Indebtedness to any other Person or any of its assets to any other Person, except for (i) sales of Inventory in the ordinary course of business, (ii) the disposition of obsolete or worn-out Equipment (other than Rolling Stock) in the ordinary course of business, (iii) the issuance and sale by Parent of Capital Stock of Parent after the date hereof; *provided* that (A) except for issuances and sales pursuant to Parent's employee benefit plans, each Administrative Agent shall have received not less than ten (10) Business Days prior written notice of such issuance and sale by Parent, which notice shall specify the parties to whom such shares are to be sold, the terms of such sale, the total amount which it is anticipated will be realized from the issuance and sale of such stock and the net cash proceeds which it is anticipated will be received by Parent from such sale, (B) Parent shall not be required to pay any cash dividends or repurchase or redeem such Capital Stock or make any other payments in respect thereof, (C) the terms of such Capital Stock, and the terms and conditions of the purchase and sale thereof, shall not include any terms that include any limitation on the right of Parent or any other Credit Party to request or receive Revolving Loans, Revolving Letter of Credit Accommodations or the right of Parent or any other Credit Party to amend or modify any of the terms and conditions of this Agreement or any of the other Financing Agreements or otherwise in any way relate to or affect the arrangements of Credit Parties with the Agents or Lenders or are more restrictive or burdensome to Credit Parties than the terms of any Capital Stock in effect on the date hereof and (D) as of the date of such issuance and sale and after giving effect thereto, no Default or Event of Default shall exist or have occurred, (iv) leases of real or personal property in the ordinary course of business in accordance with past practice and in accordance with the Financing Agreements; and (v) other Asset Sales not to exceed $10.0 million in any twelve-month period or $25.0 million in the aggregate; *provided* that the consideration received in any such Asset Sale is at least 80% in the form of cash and Cash Equivalents (except for up to an aggregate of $10.0 million of Net Cash Proceeds from the sale of any property set forth on Schedule 9.7(b) (for so long as such property continues not to be used in the Credit Parties' continuing operations), in which case the consideration must consist of at least 65% in the form of cash and Cash Equivalents);

(c) wind up, liquidate or dissolve (except in the case of the Inactive Subsidiaries); or

(d) agree to do any of the foregoing.

To the extent any Collateral is sold as permitted by this Section 9.7, such Collateral (unless sold to Parent or a Subsidiary of Parent) shall be sold free and clear of the Liens created by the Financing Agreements, and each Collateral Agent shall take all actions they deem appropriate in order to effect the foregoing.

9.8 Encumbrances. Credit Parties shall not, and shall not permit any Subsidiary of any Credit Party to, create, incur, assume, suffer or permit to exist any security interest, mortgage, pledge, Lien, charge or other encumbrance of any nature whatsoever on any of its assets or properties, including the Collateral, except (a) the security interests, hypothecs and Liens of either Collateral Agent, *provided*, *however*, that the Lien granted to the Revolving Collateral Agent shall not extend to Non-Accounts Collateral; (b) Liens securing the payment of taxes, either not yet overdue or the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Credit Parties or any Subsidiary, and in each case prior to the commencement of a foreclosure or other similar proceeding and with respect to which adequate reserves have been set aside on its books; (c) non-consensual statutory Liens (other than Liens securing the payment of taxes) arising in the ordinary course of Credit Parties' or such Subsidiary's business to the extent: (i) such Liens secure Indebtedness which is not overdue or (ii) such Liens secure Indebtedness relating to claims or liabilities which are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or being contested in good faith by appropriate proceedings diligently pursued and available to Credit Parties or any Subsidiary, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books; (d) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of Real Property which do not, individually or in the aggregate, interfere in any material respect with the use of such Real Property or ordinary conduct of the business of Credit Parties or any Subsidiary of any Credit Party as presently conducted thereon or materially impair the value of the Real Property which may be subject thereto and which do not secure Indebtedness; (e) purchase money security interests in Equipment (including Capital Leases) and purchase money mortgages on Real Property to secure Indebtedness permitted under Section 9.9(b) hereof; (f) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, including any Lien securing letters of credit issued in the ordinary course of business consistent with past practice in connection therewith, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money); (g) the security interests and Liens set forth on Schedule 9.8; and Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, including any Lien securing letters of credit issued in the ordinary course of business consistent with past practice in connection therewith, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money); (h) Liens on Non-Accounts Collateral pursuant to the Security Documents (other than the Mortgages); (i) second lien mortgages encumbering Mortgaged Properties which secure the Senior Secured Notes, so long as such Liens expressly rank junior to the Liens securing the LC Facility Obligations; and (j) encumbrances shown on the title commitments for Title Insurance Policies delivered to the LC Facility Administrative Agent.

9.9 Indebtedness. Credit Parties shall not, and shall not permit any Subsidiary of any Credit Party to, incur, create, assume, become or be liable in any manner with respect to, suffer or permit to exist, any Indebtedness or guarantee, assume, endorse, or otherwise become responsible for (directly or indirectly) the performance, dividends or other obligations of any Person, except:

(a) the Obligations;

(b) purchase money Indebtedness (including Capital Leases) arising after the date hereof to the extent secured by purchase money security interests in Equipment (including Capital Leases) and purchase money mortgages on Real Property not to exceed $20.0 million in the aggregate at any time outstanding so long as such security interests and mortgages do not apply to any property of Credit Parties other than the Equipment or Real Property so acquired, and the Indebtedness secured thereby does not exceed the cost of the Equipment or Real Property so acquired, as the case may be;

(c) guarantees by any Subsidiaries of Credit Parties of the Obligations in favor of any Agent and Lenders;

(d) Indebtedness owed by a Credit Party to any other Credit Party which Indebtedness (x) is hereby subordinated to the prior indefeasible payment in full in cash of the Obligations and (y) shall be represented by an Instrument in form satisfactory to the LC Facility Collateral Agent and delivered to the LC Facility Collateral Agent pursuant to the Security Agreement;

(e) the Senior Secured Notes and guaranties thereof by any Credit Party; *provided* that (i) Credit Parties shall not, directly or indirectly, amend, modify, alter or change the terms of such Indebtedness or any agreement, document or instrument related thereto as in effect on the date hereof or prepay or defease such Indebtedness prior to the Maturity Date and (ii) Credit Parties shall furnish to each Administrative Agent all notices or demands in connection with the Senior Secured Notes either received by any Credit Party or on its behalf, promptly after the receipt thereof, or sent by any Credit Party or on its behalf, concurrently with the sending thereof, as the case may be;

(f) Indebtedness of the Credit Parties in respect of performance bonds, bankers' acceptances, workers' compensation claims, surety or appeal bonds, payment obligations in connection with self-insurance or similar obligations, and in the ordinary course of business;

(g) the Indebtedness set forth on Schedule 9.9 attached hereto; *provided* that (i) Credit Parties may only make regularly scheduled payments of principal and interest in respect of such Indebtedness in accordance with the terms of the agreement or instrument evidencing or giving rise to such Indebtedness as in effect on the date hereof, (ii) Credit Parties shall not, directly or indirectly, (A) amend, modify, alter or change the terms of such Indebtedness or any agreement, document or instrument related thereto as in effect on the date hereof except, that, Credit Parties may, after prior written notice to Lender, amend, modify, alter or change the terms thereof so as to extend the maturity

thereof, or defer the timing of any payments in respect thereof, or to forgive or cancel any portion of such Indebtedness (other than pursuant to payments thereof), or to reduce the interest rate or any fees in connection therewith, or (B) redeem, retire, defease, purchase or otherwise acquire such Indebtedness, or set aside or otherwise deposit or invest any sums for such purpose, and (iii) Credit Parties shall furnish to each Administrative Agent all notices or demands in connection with such Indebtedness either received by any Credit Party or on its behalf, promptly after the receipt thereof, or sent by any Credit Party or on its behalf, concurrently with the sending thereof, as the case may be;

(h) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of incurrence

(i) other unsecured Indebtedness of the Credit Parties in an aggregate amount not to exceed $10.0 million at any time outstanding.

9.10 Loans, Investments, Etc. Credit Parties shall not, and shall not permit any Subsidiary of any Credit Party to, directly or indirectly, make, or suffer or permit to exist, any loans or advance money or property to any person, or any investment in (by capital contribution, dividend or otherwise) or purchase or repurchase the Capital Stock or Indebtedness or all or a substantial part of the assets or property of any person, or form or acquire any Subsidiaries, or agree to do any of the foregoing (all of the foregoing, collectively, " **Investments**"), except:

(a) the endorsement of instruments for collection or deposit in the ordinary course of business;

(b) investments in cash or Cash Equivalents, *provided* that (i) not more than $5.0 million aggregate principal amount of Revolving Loans are then outstanding and (ii) the terms and conditions of Section 5.3 or 5.4, if applicable, hereof shall have been satisfied with respect to the Deposit Account or Investment Account in which such cash or Cash Equivalents are held;

(c) (1) the existing investments of the Credit Parties in their respective Subsidiaries which are Credit Parties, (2) the existing investments of Credit Parties in Subsidiaries which are not Credit Parties as of the date hereof set forth on Schedule 9.10(c), (3) additional equity investments and loans made by Parent or any other Credit Party after the date of this Agreement in or to US Credit Parties in the ordinary course of business, and (4) additional investments in the ordinary course of business by the Parent or any other Credit Party in or to its respective wholly-owned Subsidiaries organized outside of the United States; *provided* that the aggregate amount of all such additional capital contributions, investments and other amounts paid by any Credit Party to any such Subsidiaries organized outside of the United States (exclusive of investments incurred in connection with arranging financial assurances required under applicable Environmental Laws) shall not exceed $10.0 million in the case of Subsidiaries organized under the laws of Canada or a Canadian province or $1.0 million in the case of any other Subsidiary organized outside of the United States, in each case at any time outstanding;

(d) any Credit Party may make a Permitted Acquisition;

(e) stock or obligations issued to Credit Parties by any Person (or the representative of such Person) in respect of Indebtedness of such Person owing to Credit Parties in connection with the insolvency, bankruptcy, receivership or reorganization of such Person or a composition or readjustment of the debts of such Person; *provided* that the original of any such stock or instrument evidencing such obligations shall be promptly delivered to the applicable Collateral Agent, upon the applicable Collateral Agent's request, together with such stock power, assignment or endorsement by Credit Parties as the applicable Collateral Agent may request;

(f) obligations of account debtors to Credit Parties arising from Accounts which are past due evidenced by a promissory note made by such account debtor payable to Credit Parties; *provided* that promptly upon the receipt of the original of any such promissory note by Credit Parties, such promissory note shall be endorsed to the order of Accounts Collateral Agent or Canadian Collateral Agent, as applicable, by Credit Parties and promptly delivered to Accounts Collateral Agent as so endorsed;

(g) other loans and advances set forth on Schedule 9.10(g) attached hereto; *provided* that as to such loans and advances, (i) Credit Parties shall not, directly or indirectly, amend, modify, alter or change the terms of such loans and advances or any agreement, document or instrument related thereto, and (ii) Credit Parties shall furnish to each Administrative Agent all notices or demands in connection with such loans and advances either received by any Credit Party or on its behalf, promptly after the receipt thereof, or sent by any Credit Party or on its behalf, concurrently with the sending thereof, as the case may be; and

(h) other Investments that do not exceed $5 million in the aggregate at any one time outstanding.

9.11 Dividends and Redemptions. Credit Parties shall not, directly or indirectly, declare or pay any dividends on account of any shares of class of Capital Stock of any Credit Party now or hereafter outstanding, or set aside or otherwise deposit or invest any sums for such purpose, or redeem, retire, defease, purchase or otherwise acquire any shares of any class of Capital Stock (or set aside or otherwise deposit or invest any sums for such purpose) for any consideration or apply or set apart any sum, or make any other distribution (by reduction of capital or otherwise) in respect of any such shares or agree to do any of the foregoing, except in any case in the form of shares of Capital Stock consisting of common stock; *provided*, *however*, that (a) any Credit Party may pay dividends to the Parent, (b) any Subsidiary of any Credit Party may pay dividends to such Credit Party or any other Credit Party which is a wholly-owned Subsidiary of the Parent, and (c) the Parent may pay cash dividends at an annual rate of $4.00 per share on its 112,000 currently outstanding shares of Series B convertible preferred stock, *provided* that, in the case of dividends authorized by clause (c) above, no such payment shall be made if either (i) an Event of Default shall have occurred and be continuing or would result from the making of such payment or (ii) immediately before or after giving effect to any such payment, the Excess Availability shall be less than $10.0 million.

9.12 Transactions with Affiliates. Credit Parties shall not, directly or indirectly, (a) purchase, acquire or lease any property from, or sell, transfer or lease any property to, or enter into any other transaction with or for the benefit of any Affiliate of any Credit Party or any officer, director, agent or any Credit Party, except in the ordinary course of and pursuant to the reasonable requirements of any Credit Party's business and upon fair and reasonable terms no less favorable to such Credit Party than such Credit Party would obtain in a comparable arm's length transaction with an unaffiliated person, or (b) make any payments of management, consulting or other fees for management or similar services, or of any Indebtedness owing to any officer, employee, shareholder, director or other Affiliate of any Credit Party except reasonable compensation to officers, employees and directors for services rendered to Credit Parties in the ordinary course of business.

9.13 Compliance with ERISA.

(a) Credit Parties shall and shall cause each of their ERISA Affiliates to: (i) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal and State law; (ii) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; (iii) not terminate any of such Plans so as to incur any liability to the Pension Benefit Guaranty Corporation; (iv) not allow or suffer to exist any prohibited transaction involving any of such Plans or any trust created thereunder which would subject Credit Party or such ERISA Affiliate to a tax or penalty or other liability on prohibited transactions imposed under Section 4975 of the Code or ERISA; (v) make all required contributions to any Plan or Multiemployer Plan which it is obligated to pay under Section 302 of ERISA, Section 412 of the Code or the terms of such Plan or an applicable collective bargaining agreement; (vi) not allow or suffer to exist any accumulated funding deficiency, whether or not waived, with respect to any such Plan; and (vii) not allow or suffer to exist any occurrence of a reportable event or any other event or condition which presents a material risk of termination by the Pension Benefit Guaranty Corporation of any such Plan, which termination could result in any liability to the Pension Benefit Guaranty Corporation.

(b) Credit Parties shall cause the Canadian Pension Plan to be administered in accordance with the requirements of the applicable pension plan texts, funding agreements, the Income Tax Act (Canada) and applicable provincial pension benefits legislation. Upon either Canadian Collateral Agent's request, Credit Parties shall use their best efforts to deliver to such Administrative Agent an undertaking of the funding agent for the Canadian Pension Plan stating that the funding agent will notify such Administrative Agent within seven (7) days of the failure of any Credit Party to make any required contribution to the Canadian Pension Plan. Credit Parties shall not accept payment of any amount from the Canadian Pension Plan (other than amounts on account of expenses reasonably incurred in connection with the operations of such Canadian Pension Plan) without the prior written consent of such Administrative Agent. Without the prior written consent of Canadian Collateral Agent, Credit Parties shall not terminate, or cause to be terminated, the Canadian Pension Plan, if such plan would have a solvency deficiency on termination. Credit Parties shall promptly provide Canadian Collateral Agent with any documentation relating to the Canadian Pension Plan as Canadian Collateral Agent may reasonably request. Credit Parties shall notify Canadian Collateral Agent within thirty (30) days of (i) a material increase in the liabilities of the Canadian Pension Plan, (ii) the establishment of a new registered

pension plan, (iii) commencing payment of contributions to the Canadian Pension Plan to which any Credit Party had not previously been contributing.

9.14 End of Fiscal Years: Fiscal Quarters. Each Credit Party shall, for financial reporting purposes, cause its, and each of its Subsidiaries' (a) fiscal years to end on December 31st of each year and (b) fiscal quarters to end on March 31st, June 30th, September 30th and December 31st of each year.

9.15 Change in Business. Credit Parties shall not engage in any business other than the business of Credit Parties on the date hereof and any business reasonably related, ancillary or complimentary to the business in which Credit Parties are engaged on the date hereof.

9.16 Limitation of Restrictions Affecting Subsidiaries. Credit Parties shall not, directly, or indirectly, create or otherwise cause or suffer to exist any encumbrance or restriction which prohibits or limits the ability of any Subsidiary of any Credit Party to (a) pay dividends or make other distributions or pay any Indebtedness owed to Credit Parties or any Subsidiary of any Credit Party; (b) make loans or advances to any Credit Party or any Subsidiary of any Credit Party; (c) transfer any of its properties or assets to any Credit Party or any Subsidiary of any Credit Party; or (d) create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than encumbrances and restrictions arising under (i) applicable law, (ii) this Agreement, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of any Credit Party or any of its Subsidiaries, (iv) customary restrictions on dispositions of real property interests found in reciprocal easement agreements of any Credit Party or its Subsidiaries, (v) any agreement relating to permitted Indebtedness incurred by a Subsidiary of any Credit Party prior to the date on which such Subsidiary was acquired by any Credit Party and outstanding on such acquisition date, and (vi) the extension or continuation of contractual obligations in existence on the date hereof, *provided* that any such encumbrances or restrictions contained in such extension or continuation are no less favorable to the Administrative Agents and Lenders than those encumbrances and restrictions under or pursuant to the contractual obligations so extended or continued.

9.17 Leverage Ratio. Credit Parties shall not permit the Leverage Ratio of Parent and its Subsidiaries for each period of four (4) consecutive fiscal quarters of Parent and its Subsidiaries for which the last fiscal quarter ends on a date set forth below to be more than the amount set forth opposite such date:

Fiscal Quarter End	Leverage Ratio
September 30, 2004	3.00 to 1.0
December 31, 2004	2.80 to 1.0
March 31, 2005	2.55 to 1.0
June 30, 2005	2.50 to 1.0
September 30, 2005	2.50 to 1.0
December 31, 2005	2.50 to 1.0
March 31, 2006	2.50 to 1.0
June 30, 2006	2.45 to 1.0
September 30, 2006	2.40 to 1.0
December 31, 2006	2.40 to 1.0
March 31, 2007	2.35 to 1.0
June 30, 2007	2.35 to 1.0
September 30, 2007	2.35 to 1.0
December 31, 2007	2.35 to 1.0
March 31, 2008	2.30 to 1.0
June 30, 2008	2.30 to 1.0
September 30, 2008	2.30 to 1.0
December 31, 2008	2.30 to 1.0
March 31, 2009 and the last day of each fiscal quarter ending thereafter	2.25 to 1.0

9.18 Interest Coverage Ratio. Credit Parties shall not permit the Interest Coverage Ratio of Parent and its Subsidiaries for each period of four (4) consecutive fiscal quarters of Parent and its Subsidiaries for which the last quarter ends on a date set forth below to be less than the amount set forth opposite such date:

Fiscal Quarter End	Interest Coverage Ratio
September 30, 2004	2.25 to 1.0
December 31, 2004	2.40 to 1.0
March 31, 2005	2.65 to 1.0
June 30, 2005	2.70 to 1.0
September 30, 2005	2.70 to 1.0
December 31, 2005	2.70 to 1.0
March 31, 2006	2.75 to 1.0
June 30, 2006	2.80 to 1.0
September 30, 2006	2.80 to 1.0
December 31, 2006	2.85 to 1.0
March 31, 2007	2.85 to 1.0
June 30, 2007	2.85 to 1.0
September 30, 2007	2.85 to 1.0
December 31, 2007	2.85 to 1.0
March 31, 2008 and the last day of each fiscal quarter ending thereafter	3.00 to 1.0

9.19 Fixed Charge Coverage Ratio; Minimum EBITDA. (a) Credit Parties shall not permit the Fixed Charge Coverage Ratio of Parent and its Subsidiaries for each period of four (4) consecutive fiscal quarters of the Parent and its Subsidiaries (a " Fixed Charge Period") measured as of the end of each quarter (a "Fixed Charge Test Date") commencing with the quarter ending December 31, 2004 to be less than 1.0 to 1.0; provided, that for purposes of determining the Fixed Charge Coverage Ratio for any period ending on or prior to the first anniversary of the Effective Date, the Fixed Charge Period shall comprise the period of fiscal quarters which begin on July 1, 2004 and end on the Fixed Charge Test Date for such period.

(b) Credit Parties shall not permit the Consolidated EBITDA of Parent and its Subsidiaries for the fiscal quarter of Parent ending on September 30, 2004 to be less than $15,000,000.

9.20 Limitation on Capital Expenditures. Permit the aggregate amount of Capital Expenditures made in any fiscal year of Parent (i) ending on or prior to December 31, 2007, to exceed $30.0 million in the aggregate or (ii) commencing on or after January 1, 2008 to exceed $32.0 million; *provided*, *however*, that (x) if the aggregate amount of Capital Expenditures made in any fiscal year shall be less than the maximum amount of Capital Expenditures permitted under this Section 9.20 for such fiscal year (before giving effect to any carryover), then an amount of such shortfall not exceeding 50% of such maximum amount (without giving effect to clause (z) below) may be added to the amount of Capital Expenditures permitted under this Section 9.20 for the immediately succeeding (but not any other) fiscal year, and (y) in determining whether any amount is available for carryover, the amount expended in any fiscal year shall first be deemed to be from the amount allocated to such fiscal year (before giving effect to any carryover).

9.21 License Agreements.

(a) Credit Parties shall (i) promptly and faithfully observe and perform all of the material terms, covenants, conditions and provisions of the material License Agreements to be observed and performed by it, at the times set forth therein, if any, (ii) not do, permit, suffer or refrain from doing anything that could reasonably be expected to result in a default under or breach of any of the terms of any material License Agreement, (iii) not cancel, surrender, modify, amend, waive or release any material License Agreement in any material respect or any term, provision or right of the licensee thereunder in any material respect, or consent to or permit to occur any of the foregoing; except that, subject to Section 9.21(b), Credit Parties may cancel, surrender or release any material License Agreement in the ordinary course of the business of Credit Party; *provided* that Credit Parties shall give each Administrative Agent not less than thirty (30) days prior written notice of their intention to so cancel, surrender and release any such material License Agreement, (iv) give each Administrative Agent prompt written notice of any material License Agreement entered into by any Credit Party after the date hereof, together with a true, correct and complete copy thereof and such other information with respect thereto as such Administrative Agent may request, (v) give each Administrative Agent prompt written notice of any material breach of any obligation, or any default, by any party under any material License Agreement, and deliver to such Administrative Agent (promptly upon the receipt thereof by Credit Party in the case of a notice to any Credit Party, and concurrently with the sending thereof in the case of a notice from any Credit Party) a copy of each notice of default and every other notice and other communication received or delivered by any Credit Party in connection with any material License Agreement which relates to the right of a Credit Party to continue to use the property subject to such License Agreement, and (vi) furnish to each Administrative Agent, promptly upon the request of such Administrative Agent, such information and evidence as such Administrative Agent may require from time to time concerning the observance, performance and compliance by any Credit Party or the other party or parties thereto with the terms, covenants or provisions of any material License Agreement.

(b) Credit Parties will either exercise any option to renew or extend the term of each material License Agreement in such manner as will cause the term of such material License Agreement to be effectively renewed or extended for the period provided by such option and give prompt written notice thereof to each Administrative Agent or give such Administrative Agent prior written notice that Credit Parties do not intend to renew or extend the term of any such material License Agreement or that the term thereof shall otherwise be expiring, not less than sixty (60) days prior to the date of any such non-renewal or expiration. In the event of the failure of Credit Parties to extend or renew any material License Agreement, each Administrative Agent shall have, and is hereby granted, the irrevocable right and authority, at its option, to renew or extend the term of such material License Agreement, whether in its own name and behalf, or in the name and behalf of a designee or nominee of such Administrative Agent or in the name and behalf of such Credit Party, as such Administrative Agent shall determine at any time that an Event of Default shall exist or have occurred and be continuing. Each Administrative Agent may, but shall not be required to, perform any or all of such obligations of any Credit Party under any of the License Agreements, including, but not limited to, the payment of any or all sums due from Credit Party thereunder. Any sums so paid by any Agent shall constitute part of the Obligations.

9.22 Inactive Subsidiaries. Credit Parties shall not permit any Inactive Subsidiary to (a) become an active company having operations or conduct business, or (b) own any assets other than assets with a fair market value not in excess of $25,000 in the aggregate for all Inactive Subsidiaries.

9.23 Costs and Expenses. Credit Parties shall pay to each Agent on demand all costs, expenses, filing fees and taxes paid or payable in connection with the preparation, negotiation, execution, delivery, recording, administration, collection, liquidation, enforcement and defense of the applicable Obligations, Secured Parties' rights in the Collateral, this Agreement, the other Financing Agreements and all other documents related hereto or thereto, including any amendments, supplements or consents which may hereafter be contemplated (whether or not executed) or entered into in respect hereof and thereof, including: (a) all costs and expenses of filing or recording (including Uniform Commercial Code financing statement filing taxes and fees, documentary taxes, intangibles taxes and mortgage recording taxes and fees, if applicable); (b) costs and expenses and fees for insurance premiums, environmental audits, surveys, assessments, engineering reports and inspections, appraisal fees and search fees, costs and expenses of remitting loan proceeds, collecting checks and other items of payment, and establishing and maintaining the Blocked Accounts, together with such Agent's customary charges and fees with respect thereto; (c) charges, fees or expenses charged by any bank or issuer in connection with the Revolving Letter of Credit Accommodations; (d) costs and expenses of preserving and protecting the Collateral; (e) costs and expenses paid or incurred by Secured Parties in connection with obtaining payment of the Obligations, enforcing the security interests and Liens of Collateral Agents, selling or otherwise realizing upon the Collateral, and otherwise enforcing the provisions of this Agreement and the other Financing Agreements or defending any claims made or threatened against such Agent or any Lender arising out of the transactions contemplated hereby and thereby (including preparations for and consultations concerning any such matters); (f) all out-of-pocket expenses and costs heretofore and from time to time hereafter incurred by either Collateral Agent during the course of periodic field examinations of the Collateral and Credit Parties' operations, plus a per diem charge at the rate of $750 per person per day for such Collateral Agent's examiners in the field and office; and (g) the fees and disbursements of counsel (including legal assistants) to such Agent and, if an Event of Default under Section 10(a)(i) has occurred and is continuing, Lenders, in connection with any of the foregoing.

9.24 Further Assurances. At the request of any Collateral Agent at any time and from time to time, Credit Parties shall, at their expense, duly execute and deliver, or cause to be duly executed and delivered, such further agreements, documents and instruments, and do or cause to be done such further acts as may be necessary or proper to evidence, perfect, maintain and enforce the security interests and the priority thereof in the Collateral and to otherwise effectuate the provisions or purposes of this Agreement or any of the other Financing Agreements, including but not limited to obtaining written releases of prior security interests in the Collateral and obtaining documents which demonstrate Credit Parties' current ownership of the Collateral. Any Administrative Agent may at any time and from time to time request a certificate from an officer of Credit Parties representing that all conditions precedent to the making of Loans providing Letter of Credit Accommodations and LC Facility Letters of Credit contained herein are satisfied. In the event of such request by an Administrative Agent, Lenders may, at their option, cease to make any further Loans and such Administrative Agent may, at its option, cease to provide any

further Revolving Letter of Credit Accommodations until such Administrative Agent has received such certificate and, in addition, such Administrative Agent has determined that such conditions are satisfied.

9.25 Applications Under Insolvency Statutes. Each Credit Party acknowledges that its business and financial relationships with Agent and Lenders are unique from its relationship with any other of its creditors, and agrees that it shall not file any plan of arrangement under the Companies' Creditors Arrangement Act (Canada) or make any proposal under the Bankruptcy and Insolvency Act (Canada) which provides for, or would permit directly or indirectly, Agent or any Lender to be classified with any other creditor for purposes of such plan or proposal or otherwise.

9.26 Additional Collateral.

(a) US Credit Parties shall cause each Subsidiary of any US Credit Party not in existence on the Effective Date (other than any Foreign Subsidiary) to execute and deliver to any or all of the Revolving Administrative Agent, LC Facility Administrative Agent, Accounts Collateral Agent and/or the LC Facility Collateral Agent (as specified below) promptly and in any event within 3 days after the formation, acquisition or change in status thereof (A) a signed counterpart of this Agreement as a US Borrower and a signed counterpart of the Security Agreement as an Assignor, (B) an Opinion of Counsel in form and substance satisfactory to each Administrative Agent as to the due execution and delivery of this Agreement and the Security Agreement, the ability of such Subsidiary to perform all of its obligations hereunder and thereunder and perfection and creation of Liens on Collateral as such Administrative Agent may reasonably request in respect of complying with any legend on any such certificate or any other matter relating to such shares, and (C) such other agreements, instruments, approvals, legal opinions or other documents reasonably requested by any such Agent in order to create, perfect, establish the first priority of or otherwise protect any Lien purported to be covered by any such Financing Agreement or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in the Financing Agreements applicable to a US Credit Party. Within 20 days after the Effective Date (or such longer period as may be consented to by the LC Facility Collateral Agent in its sole discretion), the applicable US Borrowers shall enter into a Deposit Account Control Agreement in favor of LC Facility Collateral Agent with respect to the principal operating account of US Borrowers and shall take such other actions including opening and maintaining (for so long as any Deposit Account Control Agreement in favor of LC Facility Collateral Agent provides that the Deposit Account subject to such agreement shall automatically be liquidated into a Deposit Account specified by LC Facility Collateral Agent upon LC Facility Collateral Agent notifying the Bank that is party to such agreement of LC Facility Collateral Agent's exercise of its right of sole control over such Deposit Account) a Deposit Account with a financial institution selected by LC Facility Collateral Agent (which may be an Affiliate of LC Facility Collateral Agent) for the purpose of receiving any funds liquidated from any Deposit Account subject to a Deposit Account Control Agreement in favor of LC Facility Collateral Agent.

(b) Credit Parties shall cause each Subsidiary of any Credit Party that is not in existence on the Effective Date and which is organized under the laws of Canada or any province

thereof to execute and deliver to any or all of the Revolving Administrative Agent or Canadian Collateral Agent promptly and in any event within 3 days after the formation, acquisition or change in status thereof (A) a signed counterpart of this Agreement in the capacity of a Canadian Borrower, (B) an Opinion of Counsel in form and substance satisfactory to Revolving Administrative Agent as to the due execution and delivery of this Agreement and the ability of such Subsidiary to perform all of its obligations hereunder of such Subsidiary as the Revolving Administrative Agent or Canadian Collateral Agent may reasonably request in respect of complying with any legend on any such certificate or any other matter relating to such shares, (C) any Canadian Security Documents, if applicable, and (D) such other agreements, instruments, approvals, legal opinions or other documents reasonably requested by such Revolving Administrative Agent or Canadian Collateral Agent in order to create, perfect, establish the first priority of or otherwise protect any Lien purported to be covered by any such Financing Agreement or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in the Financing Agreements applicable to a Canadian Borrower.

9.27 Post-Closing Real Property.

(a) Upon the acquisition by any US Credit Party after the Effective Date of any interest (whether fee or leasehold) in any Real Property (wherever located) (each such interest being an "**Subject Property**") (x) with a Current Value (as defined below) in excess of $1,000,000 in the case of a fee interest or (y) requiring the payment of annual rent exceeding in the aggregate $1,000,000 in the case of leasehold interest, promptly (but in any event within three Business Days of the date of such acquisition or of the date of the notice given by the LC Facility Collateral Agent pursuant to the last sentence of this Section 9.27) so notify the LC Facility Collateral Agent, setting forth with specificity a description of the interest acquired, the location of the real property, the function and purposes of such real property (including, without limitation, if any landfill activities are or are intended to be conducted thereon) any structures or improvements thereon and either an appraisal or such US Credit Party's good-faith estimate of the current value of such real property (for purposes of this Section, the "**Current Value**"). The LC Facility Collateral Agent shall notify such US Credit Party whether it intends to require a Mortgage and the other documents referred to below or in the case of leasehold, a leasehold mortgage or landlord's waiver; *provided* (i) at any time any Collateral with a book value in excess of $250,000 (when aggregated with all other Collateral at the same location) is located on any real property of a Credit Party (whether such real property is now existing or acquired after the Effective Date) which is not owned by a Credit Party, obtain written subordinations or waivers, in form and substance satisfactory to the LC Facility Collateral Agents, of all present and future Liens which the owner or lessor of such premises may be entitled to assert against the Collateral; and (ii) use commercially reasonable efforts to obtain written access agreements, in form and substance satisfactory to the LC Facility Collateral Agent, providing access to Collateral located on any premises not owned by a Credit Party in order to remove such Collateral from such premises during an Event of Default. Upon receipt of such notice requesting a Mortgage, the US Credit Party which has acquired such Subject Property shall immediately furnish to the LC Facility Collateral Agent the following, each in form and substance satisfactory to the LC Facility Collateral Agent: (i) a Mortgage with respect to such real property and related assets located at the Subject Property, each duly executed by such Person and in recordable form; (ii) evidence of the recording of the Mortgage referred to in clause (i) above in such office or offices as may be

necessary or, in the opinion of the LC Facility Collateral Agent, desirable to create and perfect a valid and enforceable first priority Lien on the property purported to be covered thereby or to otherwise protect the rights of the LC Facility Collateral Agent and the LC Facility Lenders thereunder, (iii) a Title Insurance Policy, (iv) an ALTA survey of such real property, certified to the Agent and to the issuer of the Title Insurance Policy by a licensed professional surveyor and using a form of certification reasonably satisfactory to the LC Facility Collateral Agent, (v) Phase I Environmental Site Assessments with respect to such Real Property, certified to the LC Facility Collateral Agent by a company reasonably satisfactory to the LC Facility Collateral Agent, (vi) in the case of a leasehold interest, a certified copy of the lease between the landlord and such Person with respect to such Real Property in which such Person has a leasehold interest, and the certificate of occupancy with respect thereto, (vii) in the case of a leasehold interest, an attornment and nondisturbance agreement between the landlord (and any fee mortgagee) with respect to such real property and the LC Facility Collateral Agent, (viii) evidence satisfactory to the LC Facility Collateral Agent of the compliance of such Real Property with all applicable building codes, subdivision and zoning laws, rules and regulations, (ix) such other documents or instruments (including guarantees and opinions of counsel) as the LC Facility Collateral Agent may reasonably require, and (x) opinion of local counsel in each jurisdiction in which Mortgaged Property is located in each case in form and substance reasonably satisfactory to LC Facility Collateral Agent. With respect to (i) any interest in Real Property held by a US Credit Party as of the Effective Date that was not a Mortgaged Property as of the Effective Date but would have been a Subject Property if acquired after the Effective Date and (ii) any property listed on Schedule 9.27 that has not been sold with 60 days following the Effective Date, the LC Facility Collateral Agent shall be entitled, upon written notice to Parent, to require that such US Credit Party take any or all of the actions set forth in this Section 9.27(a) (as determined by the LC Facility Collateral Agent in its sole discretion) with respect to such interest in Real Property as if such interest in Real Property were a Subject Property.

(b) Parent shall or shall cause the applicable Credit Party to obtain and deliver to LC Facility Collateral Agent, (A) within sixty (60) Business Days after the Effective Date, unless waived or extended by LC Facility Collateral Agent in its sole discretion (i) a Survey for the Mortgaged Properties located at 660 Lenfest Road, San Jose, Ca; Highway 169 North Industrial Park, Coffeyville, KS; Hwy 1112 (2029 Bayou Plaquemine Road), Rayne, LA; Route 322 & I-295 (PO Box 337), Bridgeport, NJ; 1672 E. Highland Road, Twinsburg, OH; 4105 Whittaker Ave., Philadelphia, PA, and 32655 Gracie Lane, Plaquemine, LA (to the extent that the survey reveals no access Borrower or applicable Credit Party shall use reasonable efforts obtain formal access to such property) and (ii) such duly executed affidavits and/or other documents requested by the Title Company, each in form and substance suitable to the Title Company to induce it to remove the standard survey exceptions from the applicable Title Insurance Policies and issue the survey related endorsements required under Section 4.1(k)(iv); (B) to the extent requested by LC Facility Collateral Agent, within sixty (60) Business Days of such request, unless waived or extended by LC Facility Collateral Agent in its sole discretion (i) a Survey for the Mortgage Properties located at 1200 Marietta Way, Sparks, NV; 2900 Rockefeller Ave., Cleveland, OH; and 5324 W. 46th Street South, Tulsa, OK; and (ii) such duly executed affidavits and/or other documents requested by the Title Company, each in form and substance suitable to the Title Company to induce it to remove the standard survey exceptions from the applicable Title Insurance Policies and issue the survey related endorsements required under Section 4.1(k)(iv) and (C) within

ten (10) business days after the Effective Date, unless waived or extended by the LC Facility Collateral Agent in its sole discretion, (i) the opinions set forth in Section 4.1(k)(ii) herein from local counsel located in California, Connecticut, Kansas, Massachusetts, Maryland, Maine, Nebraska, New Jersey, Nevada, Ohio, Pennsylvania, Tennessee, Texas, and Utah with respect to Mortgaged Property located in such states and (ii) with respect to all property located in Maryland, a mortgage in accordance with Section 4.1(k)(i) herein, a Title Insurance Policy in accordance with Section 4.1(k)(iv) herein, any such affidavits, certificates, consents, approvals, or other instruments, as necessary, pursuant to Section 4.1(k)(iii) and Section 4.1(k)(vi), and evidence of payment of premiums pursuant to Section 4.1(k)(vi).

9.28 Information Regarding Collateral.

(a) Each Credit Party will furnish to each Collateral Agent prompt written notice of any change (i) in such Credit Party's corporate name, (ii) in any Credit Party's identity or corporate structure, (iii) in any Credit Party's organizational identification number, if any, or (iv) in any Credit Party's jurisdiction of organization. Each Credit Party further agrees to give notice to each Collateral Agent within 15 days of any such change. Each Credit Party also agrees promptly to notify each Administrative Agent if any material portion of the Collateral is damaged or destroyed.

(b) Concurrently with the delivery of financial statements pursuant to Section 9.6(b) hereof, the Credit Party shall deliver to each Administrative Agent and each Collateral Agent a Perfection Certificate Supplement, a form of which is attached as Exhibit A-2 to this Agreement, and a certificate of a financial officer and the chief legal officer of Parent certifying that all UCC financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations, including all refilings, rerecordings and reregistrations, containing a description of the Collateral have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction necessary to protect and perfect the security interests and Liens under the Security Documents for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period).

9.29 Anti-Terrorism Law; Anti-Money Laundering. None of Parent or any of its Subsidiaries shall:

(a) directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in Section 8.21, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Order or any other Anti-Terrorism Law or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Credit Parties shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming the Credit Parties' compliance with this Section 9.29); or

(b) cause or permit any of the funds of such Credit Party that are used to repay Secured Obligations to be derived from any unlawful activity with the result that the making of the Loans would be in violation of law.

9.30 Embargoed Person. None of Parent or any of its Subsidiaries shall cause or permit (a) any of the funds or properties of the Credit Parties that are used to repay the Loans or any reimbursement hereunder to constitute property of, or be beneficially owned directly or indirectly by, any person subject to sanctions or trade restrictions under United States law ("**Embargoed Person**" or "**Embargoed Persons**") that is identified on (1) the "List of Specially Designated Nationals and Blocked Persons" (the "**SDN List**") maintained by OFAC and/or on any other similar list ("**Other List**") maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq*., The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq*., and any Executive Order (defined below) or regulation promulgated thereunder, with the result that the investment in the Loan Parties (whether directly or indirectly) is prohibited by law, or the Loans made by the Lenders would be in violation of law, or (2) the Order, any related enabling legislation or any other similar orders (collectively, "**Executive Orders**"), or (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Credit Parties, with the result that the investment in the Loan Parties (whether directly or indirectly) is prohibited by law or the Loans are in violation of law.

9.31 Maintenance of Rating on LC Facility. Parent and its Subsidiaries shall use their reasonable best efforts to cause each of Standard & Poor's, a division of The McGraw-Hill Companies, and Moody's Investors Service, Inc. to maintain monitored public ratings of the LC Facility at all times, including, without limitation, at the reasonable request of LC Facility Administrative Agent, meeting from time to time with representatives of such agencies at the offices of such agencies.

9.32 Prepayments of Other Indebtedness; Modifications of Organizational Documents and Other Documents, etc. None of Parent or any of its Subsidiaries shall directly or indirectly:

(a) make (or give any notice in respect thereof) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any Indebtedness, except as otherwise permitted by this Agreement; *provided* that so long as no Event of Default shall have occurred and be continuing (or would result therefrom), the Excess Cash Flow Offer may be made in accordance with the terms of the Senior Secured Notes Indenture as in effect on the Effective Date;

(b) amend or modify, or permit the amendment or modification of, any provision of the Senior Secured Notes Indenture in any manner that is adverse in any material respect to the interests of the Lenders; or

(c) terminate, amend, modify or change any of its Organizational Documents (including by the filing or modification of any certificate of designation) or any agreement to which it is a party with respect to its Capital Stock (including any stockholders'

agreement), or enter into any new agreement with respect to its Capital Stock, other than any such amendments, modifications or changes or such new agreements which are not adverse in any material respect to the interests of the Lenders; *provided* that Parent may issue such Capital Stock, so long as such issuance is not prohibited by Section 9.10 or any other provision of the Financing Agreement, and may amend its Organizational Documents to authorize any such Capital Stock.

9.33 Sale and Leaseback Transactions. None of Parent or any of its Subsidiaries shall enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "**Sale and Leaseback Transaction**") unless (i) the sale of such property is permitted by Section 9.7 and (ii) any Liens arising in connection with its use of such property are permitted by Section 9.8.

9.34 No Further Negative Pledge. None of Parent or any of its Subsidiaries shall enter into any agreement, instrument, deed or lease which prohibits or limits the ability of any Credit Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, or which requires the grant of any security for an obligation if security is granted for another obligation, except the following: (1) this Agreement and the other Financing Agreements; (2) covenants in documents creating Liens permitted by Section 9.8 prohibiting further Liens on the properties encumbered thereby; (3) the Senior Note Indenture as in effect on the Closing Date; (4) any other agreement that does not restrict in any manner (directly or indirectly) Liens created pursuant to the Financing Agreements on any Collateral securing the Obligations and does not require the direct or indirect granting of any Lien securing any Indebtedness or other obligation by virtue of the granting of Liens on or pledge of property of any Credit Party to secure the Obligations; and (5) any prohibition or limitation that (a) exists pursuant to applicable law, (b) consists of customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 9.7 pending the consummation of such sale, (c) restricts subletting or assignment of any lease governing a leasehold interest of Credit Party or a Subsidiary, (d) exists in any agreement in effect at the time such Subsidiary becomes a Subsidiary of Credit Party, so long as such agreement was not entered into in contemplation of such person becoming a Subsidiary or (e) is imposed by any amendments or refinancings that are otherwise permitted by the Financing Agreements of the contracts, instruments or obligations referred to in clause (3) or (5)(e); *provided* that such amendments and refinancings are no more materially restrictive with respect to such prohibitions and limitations than those prior to such amendment or refinancing.

SECTION 10. EVENTS OF DEFAULT AND REMEDIES.

10.1 Events of Default. The occurrence or existence of any one or more of the following events are referred to herein individually as an " **Event of Default**", and collectively as "**Events of Default**":

(a) (i) Any Credit Party fails to pay when due any of the Obligations (other than third party fees and expenses provided under Section 9.23 of this Agreement), (ii) any Credit Party fails to pay any third party fees, interest or expenses of Agent or Lenders

provided under Section 9.23 of this Agreement within five (5) Business Days of the due date, or (iii) any Credit Party fails to perform any of the covenants contained in Sections 9.2, 9.3, 9.6, 9.15, 9.21 or 9.22 of this Agreement and such failure shall continue for thirty (30) days; *provided* that such thirty (30) day period shall not apply in the case of: (A) a failure to observe such covenant which is not capable of being cured at all or within such thirty (30) day period or which has been the subject of a prior failure within a six (6) month period, or (B) an intentional breach of any Credit Party of any such covenant, or (iv) any Credit Party fails to perform any of the other terms, covenants, conditions or provisions contained in this Agreement or any of the other Financing Agreements;

(b) any representation, warranty or statement of fact made by any Credit Party to the Agents and/or Lenders in this Agreement, the other Financing Agreements or any other agreements, schedule, confirmatory assignment or otherwise shall when made or deemed made be false or misleading in any material respect;

(c) [intentionally omitted];

(d) any judgment for the payment of money is rendered against any Credit Party in excess of the US Dollar Equivalent of $2.5 million in any one case or in the aggregate and shall remain undischarged or unvacated for a period in excess of thirty (30) days or execution shall at any time not be effectively stayed, or any judgment other than for the payment of money, or injunction, attachment, garnishment or execution is rendered against any Credit Party or any of its assets;

(e) any Credit Party which is a partnership, limited liability company, limited liability partnership, corporation or business trust, dissolves or suspends or discontinues doing business;

(f) any Credit Party becomes insolvent (however defined or evidenced), makes an assignment for the benefit of creditors, makes or sends notice of a bulk transfer or calls a meeting of its creditors or principal creditors;

(g) a case or proceeding under the bankruptcy laws of the United States of America now or hereafter in effect, or a petition, case, application or proceeding under any bankruptcy or insolvency laws of Canada (including the Bankruptcy and Insolvency Act (Canada) and the Companies' Creditors Arrangement Act (Canada)) or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity) is filed against any Credit Party or all or any part of its properties and such petition or application is not dismissed within thirty (30) days after the date of its filing or any Credit Party shall file any answer admitting or not contesting such petition or application or indicates its consent to, acquiescence in or approval of, any such action or proceeding or the relief requested is granted sooner;

(h) a case or proceeding under the bankruptcy laws of the United States of America now or hereafter in effect, or a petition, case, application or proceeding under any bankruptcy or insolvency laws of Canada (including the Bankruptcy and Insolvency

Act (Canada) and the Companies' Creditors Arrangement Act (Canada)) or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at a law or equity) is filed by any Credit Party or for all or any part of its property; or

(i) any default by any Credit Party under any agreement, document or instrument relating to any Indebtedness for borrowed money owing to any person other than to Agent and Lenders hereunder or under the other Financing Agreements, or any capitalized lease obligations, contingent Indebtedness in connection with any guarantee, letter of credit, indemnity or similar type of instrument in favor of any person other than to Agent and Lenders hereunder or under the other Financing Agreements, in any case in an amount in excess of the US Dollar Equivalent of $2.5 million, which default continues for more than the applicable cure period, if any, with respect thereto;

(j) any bank at which any deposit account of any Credit Party is maintained shall fail to comply with any of the material terms of any Deposit Account Control Agreement to which such bank is a party or any securities intermediary, commodity intermediary or other financial institution at any time in custody, control or possession of any investment property of any Credit Party shall fail to comply with any of the material terms of any Investment Property Control Agreement to which such person is a party;

(k) any material provision hereof or of any of the other Financing Agreements shall for any reason cease to be valid, binding and enforceable with respect to any party hereto or thereto (other than as to Agent or any Lender) in accordance with its terms, or any such party shall challenge the enforceability hereof or thereof, or shall assert in writing, or take any action or fail to take any action based on the assertion that any provision hereof or of any of the other Financing Agreements has ceased to be or is otherwise not valid, binding or enforceable in accordance with its terms, or any security interest or Lien provided for herein or in any of the other Financing Agreements shall cease to be a valid and perfected first priority security interest or Lien in any of the Collateral purported to be subject thereto (except as otherwise permitted herein or therein);

(l) an ERISA Event shall occur which results in or could reasonably be expected to result in liability of any Credit Party in an aggregate amount in excess of $2.5 million;

(m) any Change of Control;

(n) the indictment by any Governmental Authority, or as Agent may reasonably and in good faith determine, the threatened indictment by any Governmental Authority of any Credit Party of which any Credit Party or Agent or any Lender receives notice, in either case, as to which there is a reasonable possibility of an adverse determination, in the good faith determination of Agent, under any criminal statute, or commencement or threatened commencement of criminal or civil proceedings against any Credit Party, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of (i) any of the Collateral having a value in excess of the US Dollar

Equivalent of $2.5 million, or (ii) any other property of any Credit Party which is necessary or material to the conduct of its business;

(o) a requirement from the Minister of National Revenue for payment pursuant to Section 224 or any successor section of the Income Tax Act (Canada) or Section 317, or any successor section in respect of any Credit Party of the Excise Tax Act (Canada) or any comparable provision of similar legislation shall have been received by Agent or any Lender or any other Person in respect of any Credit Party or otherwise issued in respect of any Credit Party; or

(p) there shall be an event of default under any of the other Financing Agreements.

10.2 Remedies.

(a) At any time an Event of Default exists or has occurred and is continuing, US Revolving Secured Parties shall have all rights and remedies provided in this Agreement, the other Financing Agreements, the UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by any US Credit Party or any other Person, except as such notice or consent is expressly provided for hereunder or required by applicable law. All rights, remedies and powers granted to the Revolving Secured Parties hereunder, under any of the other Financing Agreements, the UCC or other applicable law, are cumulative, not exclusive and enforceable, in Revolving Secured Parties' discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include, without limitation, the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any US Credit Party of this Agreement or any of the other Financing Agreements. Revolving Administrative Agent may, at any time or times, proceed directly against any US Credit Party to collect the Revolving Obligations without prior recourse to the Accounts Collateral. Without limiting the foregoing, at any time an Event of Default exists or has occurred and is continuing, Revolving Administrative Agent may (or, insofar as any such action relates to Collateral, Accounts Collateral Agent may), in its discretion and shall, upon the request of the Majority Revolving Lenders, without limitation, (i) accelerate the payment of all US Revolving Obligations, terminate the US Revolving Facility and demand immediate payment thereof to Revolving Administrative Agent and US Revolving Lenders (*provided* that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), all Revolving Obligations shall automatically become immediately due and payable), (ii) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Accounts Collateral may be located and take possession of all or any portion of the Accounts Collateral or complete processing, manufacturing and repair of all or any portion of the Accounts Collateral, (iii) require US Credit Parties, at US Credit Parties' expense, to assemble and make available to Accounts Collateral Agent any part or all of the Accounts Collateral at any place and time designated by Accounts Collateral Agent, (iv) collect, foreclose, receive, appropriate, setoff (even though the US Revolving Obligations may be unmatured and regardless of the adequacy of other Accounts Collateral) and realize upon any and all Accounts Collateral, (v) remove any or all of the Accounts Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose, (vi) sell, lease, transfer,

assign, deliver or otherwise dispose of any and all Accounts Collateral (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of Accounts Collateral Agent or elsewhere) at such prices or terms as Accounts Collateral Agent may deem reasonable, for cash, upon credit or for future delivery, with the Accounts Collateral Agent having the right to purchase the whole or any part of the Accounts Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of US Credit Parties, which right or equity of redemption is hereby expressly waived and released by each US Credit Party and/or (vii) terminate the US Revolving Facility. If any of the Accounts Collateral is sold or leased by Accounts Collateral Agent upon credit terms or for future delivery, the US Revolving Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Accounts Collateral Agent. If notice of disposition of Accounts Collateral is required by law, ten (10) days' prior notice by Accounts Collateral Agent to US Credit Parties designating the time and place of any public sale or the time after which any private sale or other intended disposition of any Accounts Collateral is to be made, shall be deemed to be reasonable notice thereof and each US Credit Party waives any other notice. In the event Accounts Collateral Agent institutes an action to recover any Accounts Collateral or seeks recovery of any Accounts Collateral by way of prejudgment remedy, each US Credit Party waives the posting of any bond which might otherwise be required. At any time an Event of Default exists or has occurred and is continuing, upon Accounts Collateral Agent's request, US Credit Parties will either, as Revolving Administrative Agent shall specify, furnish cash collateral to the issuer to be used to secure and fund Revolving Administrative Agent's reimbursement obligations to the issuer in connection with any US Revolving Letter of Credit Accommodations or furnish cash collateral to Revolving Administrative Agent for the US Revolving Letter of Credit Accommodations. Such cash collateral shall be in the amount equal to one hundred ten percent (110%) of the amount of the US Revolving Letter of Credit Accommodations plus the amount of any fees and expenses payable in connection therewith through the end of the expiration of such US Revolving Letter of Credit Accommodations.

(b) At any time an Event of Default exists or has occurred and is continuing, LC Facility Secured Parties shall have all rights and remedies provided in this Agreement, the other Financing Agreements, the UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by any US Credit Party, except as such notice or consent is expressly provided for hereunder or required by applicable law. All rights, remedies and powers granted to the LC Facility Secured Parties hereunder, under any of the other Financing Agreements, the UCC or other applicable law, are cumulative, not exclusive and enforceable, in LC Facility Secured Parties' discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include, without limitation, the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any US Credit Party of this Agreement or any of the other Financing Agreements. LC Facility Administrative Agent may, at any time or times, proceed directly against any US Credit Party to collect the LC Facility Obligations without prior recourse to Non-Accounts Collateral. Without limiting the foregoing, at any time an Event of Default exists or has occurred and is continuing, LC Facility Administrative Agent may (or, insofar as any such action relates to Non-Accounts Collateral, LC Facility Collateral Agent may), in its discretion and shall, upon the request of the Majority LC Facility Lenders, without limitation, (i) accelerate the payment of all LC Facility Obligations and demand immediate payment thereof to LC Facility Administrative Agent and LC Facility Lenders, terminate the LC Facility

and terminate the obligation of the LC Facility Issuing Bank to issue or renew any LC Facility Letters of Credit (*provided* that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), all LC Facility Obligations shall automatically become immediately due and payable and the obligation of the LC Facility Issuing Bank to issue or renew any LC Facility Letters of Credit shall be terminated), (ii) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Non-Accounts Collateral (and, if the LC Facility Collateral Agent is then the Accounts Collateral Agent, the Accounts Collateral) may be located and take possession of all or any portion of such Collateral or complete processing, manufacturing and repair of all or any portion of such Collateral, (iii) require US Credit Parties, at US Credit Parties' expense, to assemble and make available to LC Facility Collateral Agent any part or all of the Non-Accounts Collateral (and, if the LC Facility Collateral Agent is then the Accounts Collateral Agent, the Accounts Collateral) at any place and time designated by LC Facility Collateral Agent, (iv) collect, foreclose, receive, appropriate, setoff (even though the LC Facility Obligations may be unmatured and regardless of the adequacy of other Collateral) and realize upon any and all Non-Accounts Collateral (and, if the LC Facility Collateral Agent is then the Accounts Collateral Agent, the Accounts Collateral), (v) remove any or all of the Non-Accounts Collateral (and, if the LC Facility Collateral Agent is then the Accounts Collateral Agent, the Accounts Collateral) from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose, (vi) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Non-Accounts Collateral (and, if the LC Facility Collateral Agent is then the Accounts Collateral Agent, the Accounts Collateral) (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of LC Facility Collateral Agent or elsewhere) at such prices or terms as LC Facility Collateral Agent may deem reasonable, for cash, upon credit or for future delivery, with the LC Facility Collateral Agent having the right to purchase the whole or any part of such Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of US Credit Parties, which right or equity of redemption is hereby expressly waived and released by each Credit Party and/or (vii) terminate the LC Facility. If any of the Non-Accounts Collateral (and, if the LC Facility Collateral Agent is then the Accounts Collateral Agent, the Accounts Collateral) is sold or leased by LC Facility Collateral Agent upon credit terms or for future delivery, the LC Facility Obligations shall not be reduced as a result thereof until payment therefor is finally collected by LC Facility Collateral Agent. If notice of disposition of any such Collateral is required by law, ten (10) days' prior notice by LC Facility Collateral Agent to US Credit Parties designating the time and place of any public sale or the time after which any private sale or other intended disposition of any Collateral is to be made, shall be deemed to be reasonable notice thereof and each US Credit Party waives any other notice. In the event LC Facility Collateral Agent institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, each US Credit Party waives the posting of any bond which might otherwise be required. At any time an Event of Default exists or has occurred and is continuing, upon LC Facility Collateral Agent's request, US Credit Parties will either deposit cash collateral into the Cash Collateral Account for the LC Facility Letters of Credit. Such cash collateral shall be in the amount equal to one hundred ten percent (110%) of the amount of the Uncovered LC Facility Amount plus the amount of any fees and expenses payable in connection therewith through the end of the expiration of each outstanding LC Facility Letter of Credit.

(c) At any time an Event of Default exists or has occurred and is continuing, Canadian Secured Parties shall have all rights and remedies provided in this Agreement, the other Financing Agreements, the UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by any Canadian Borrower or any other Person, except as such notice or consent is expressly provided for hereunder or required by applicable law. All rights, remedies and powers granted to the Canadian Secured Parties hereunder, under any of the other Financing Agreements, the UCC or other applicable law, are cumulative, not exclusive and enforceable, in Canadian Secured Parties' discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include, without limitation, the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any Canadian Borrower of this Agreement or any of the other Financing Agreements. Revolving Administrative Agent may, at any time or times, proceed directly against any Canadian Borrower to collect the Canadian Obligations without prior recourse to the Canadian Accounts Collateral. Without limiting the foregoing, at any time an Event of Default exists or has occurred and is continuing, Revolving Administrative Agent may (or, insofar as any such action relates to Collateral, Canadian Collateral Agent may), in its discretion and shall, upon the request of the Canadian Lender, without limitation, (i) accelerate the payment of all Canadian Obligations, terminate the Canadian Revolving Facility and demand immediate payment thereof to Revolving Administrative Agent and Canadian Lender (*provided* that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), all Canadian Obligations shall automatically become immediately due and payable), (ii) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Canadian Accounts Collateral may be located and take possession of all or any portion of the Canadian Accounts Collateral or complete processing, manufacturing and repair of all or any portion of the Canadian Accounts Collateral, (iii) require Canadian Borrowers, at Canadian Borrowers' expense, to assemble and make available to Canadian Collateral Agent any part or all of the Canadian Accounts Collateral at any place and time designated by Canadian Collateral Agent, (iv) collect, foreclose, receive, appropriate, setoff (even though the Canadian Obligations may be unmatured and regardless of the adequacy of other Collateral) and realize upon any and all Canadian Accounts Collateral, (v) remove any or all of the Canadian Accounts Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose, (vi) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Canadian Accounts Collateral (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of Canadian Collateral Agent or elsewhere) at such prices or terms as Canadian Collateral Agent may deem reasonable, for cash, upon credit or for future delivery, with the Canadian Collateral Agent having the right to purchase the whole or any part of the Canadian Accounts Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of Canadian Borrowers, which right or equity of redemption is hereby expressly waived and released by each Canadian Borrower and/or (vii) terminate the Canadian Revolving Facility. If any of the Canadian Accounts Collateral is sold or leased by Canadian Collateral Agent upon credit terms or for future delivery, the Canadian Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Canadian Collateral Agent. If notice of disposition of Canadian Accounts Collateral is required by law, ten (10) days' prior notice by Canadian Collateral Agent to Canadian Borrowers designating the time and place of any public sale or the time after which any private sale or other intended disposition of any Canadian Accounts Collateral is to be made, shall be deemed

to be reasonable notice thereof and each Canadian Borrower waives any other notice. In the event Canadian Collateral Agent institutes an action to recover any Canadian Accounts Collateral or seeks recovery of any Canadian Accounts Collateral by way of prejudgment remedy, each Canadian Borrower waives the posting of any bond which might otherwise be required.

(d) Accounts Collateral Agent may (and shall, upon the request of the Majority Revolving Lenders (or, following the Discharge of Revolving Obligations, the Majority LC Facility Lenders), at any time or times that an Event of Default under the Revolving Facility exists or has occurred and is continuing, enforce US Credit Parties' rights against any account debtor, secondary obligor or other obligor in respect of any of the Accounts Collateral. Without limiting the generality of the foregoing, Accounts Collateral Agent may at such time or times (i) notify any or all account debtors, secondary obligors or other obligors in respect thereof that the Receivables have been assigned to Accounts Collateral Agent and that Accounts Collateral Agent has a security interest therein and Accounts Collateral Agent may direct any or all accounts debtors, secondary obligors and other obligors to make payment of Receivables directly to Accounts Collateral Agent, (ii) extend the time of payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Receivables or other obligations included in the Accounts Collateral and thereby discharge or release the account debtor or any secondary obligors or other obligors in respect thereof without affecting any of the Revolving Obligations, (iii) demand, collect or enforce payment of any Receivables or such other obligations, but without any duty to do so, and neither Accounts Collateral Agent, nor any Lender shall be liable for the failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto, and (iv) take whatever other action Accounts Collateral Agent may deem necessary or desirable for the protection of its interests. At any time that an Event of Default exists or has occurred and is continuing, at Accounts Collateral Agent's request, all invoices and statements sent to any account debtor shall state that the Accounts and such other items in the Accounts Collateral have been assigned to Accounts Collateral Agent and are payable directly and only to Accounts Collateral Agent, and US Credit Parties shall deliver to Accounts Collateral Agent such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Accounts Collateral Agent may require. In the event any account debtor returns Inventory when an Event of Default under the Revolving Facility exists or has occurred and is continuing, US Credit Parties shall, upon Accounts Collateral Agent's request, hold the returned Inventory in trust for Accounts Collateral Agent, segregate all returned Inventory from all of its other property, dispose of the returned Inventory solely according to Accounts Collateral Agent's instructions, and not issue any credits, discounts or allowances with respect thereto without Accounts Collateral Agent, prior written consent.

(e) Canadian Collateral Agent may (and shall, upon the request of Canadian Lender) at any time or times that an Event of Default exists or has occurred and is continuing, enforce Canadian Borrowers' rights against any account debtor, secondary obligor or other obligor in respect of any of the Canadian Accounts Collateral. Without limiting the generality of the foregoing, Canadian Collateral Agent may at such time or times (i) notify any or all account debtors, secondary obligors or other obligors in respect thereof that the Receivables have been assigned to Canadian Collateral Agent and that Canadian Collateral Agent has a security interest therein and Canadian Collateral Agent may direct any or all accounts debtors, secondary obligors

and other obligors to make payment of Receivables directly to Canadian Collateral Agent, (ii) extend the time of payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Receivables or other obligations included in the Canadian Accounts Collateral and thereby discharge or release the account debtor or any secondary obligors or other obligors in respect thereof without affecting any of the Canadian Obligations, (iii) demand, collect or enforce payment of any Receivables or such other obligations, but without any duty to do so, and Canadian Collateral Agent and Canadian Lender shall not be liable for the failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto, and (iv) take whatever other action Canadian Accounts Collateral Agent may deem necessary or desirable for the protection of its interests. At any time that an Event of Default exists or has occurred and is continuing, at Canadian Collateral Agent's request, all invoices and statements sent to any account debtor shall state that the Accounts and such other items in the Canadian Accounts Collateral have been assigned to Canadian Collateral Agent and are payable directly and only to Canadian Collateral Agent, and Canadian Borrowers shall deliver to Canadian Collateral Agent such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Canadian Collateral Agent may require. In the event any account debtor returns Inventory when an Event of Default exists or has occurred and is continuing, Canadian Borrowers shall, upon Canadian Collateral Agent's request, hold the returned Inventory in trust for Canadian Collateral Agent, segregate all returned Inventory from all of its other property, dispose of the returned Inventory solely according to Canadian Collateral Agent's instructions, and not issue any credits, discounts or allowances with respect thereto without Canadian Collateral Agent's prior written consent.

(f) To the extent that applicable law imposes duties on any Collateral Agent or any Secured Party to exercise remedies in a commercially reasonable manner (which duties cannot be waived under such law), Credit Parties acknowledge and agree that it is not commercially unreasonable for such Collateral Agent and Secured Parties (i) to fail to incur expenses reasonably deemed significant by such Collateral Agent or any such Secured Party to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain consents of any Governmental Authority or other third party for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against account debtors, secondary obligors or other persons obligated on Collateral or to remove Liens or encumbrances on or any adverse claims against Collateral, (iv) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other persons, whether or not in the same business as Credit Parties, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, (xi) to purchase insurance or credit enhancements to insure such Collateral Agent and any such Secured Party against risks of

loss, collection or disposition of Collateral or to provide to such Collateral Agent or any such Secured Party a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by such Collateral Agent or any such Secured Party, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist such Collateral Agent or Secured Party in the collection or disposition of any of the Collateral. Credit Parties acknowledge that the purpose of this Section 10.2 is to provide non-exhaustive indications from Credit Parties of what actions or omissions by such Collateral Agent or any such Secured Party would not be commercially unreasonable in such Collateral Agent's and/or Secured Party's exercise of remedies against the Collateral and that other actions or omissions by any such Collateral Agent or Secured Party shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 10.2. Without limitation of the foregoing, nothing contained in this Section 10.2 shall be construed to grant any rights to Credit Parties or to impose any duties on any Collateral Agent or any Secured Party that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 10.2.

(g) For the purpose of enabling Accounts Collateral Agent to exercise the rights and remedies hereunder, each US Credit Party hereby grants to Accounts Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to US Credit Parties) to, at any time when an Event of Default has occurred and is continuing, use, assign, license or sublicense any of the trademarks, service-marks, trade names, business names, trade styles, designs, logos and other source of business identifiers and other Intellectual Property and general intangibles now owned or hereafter acquired by US Credit Parties, wherever the same maybe located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof. Additionally, for the purpose of enabling Accounts Collateral Agent to exercise its rights and remedies hereunder, US Credit Parties hereby grant to Accounts Collateral Agent an irrevocable right of access, easement and license (exercisable without payment of any fee or other compensation to US Credit Parties) to, at any time when an Event of Default has occurred and is continuing, enter into any Real Property of US Credit Parties and to use and operate any Equipment or other goods thereon and to utilize any Inventory of the US Credit Parties in connection with the fulfillment and completion of any contractual or other obligations of US Credit Parties to their account debtors and customers.

(h) For the purpose of enabling Canadian Collateral Agent to exercise the rights and remedies hereunder, each Canadian Borrower hereby grants to Canadian Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to Canadian Borrowers) to, at any time when an Event of Default has occurred and is continuing, use, assign, license or sublicense any of the trademarks, service-marks, trade names, business names, trade styles, designs, logos and other source of business identifiers and other Intellectual Property and general intangibles now owned or hereafter acquired by Canadian Borrowers, wherever the same maybe located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof. For the purpose of enabling Canadian Collateral Agent to exercise its rights and remedies hereunder, Canadian Borrowers hereby grant to Canadian Collateral Agent an irrevocable right of access, easement and license (exercisable without payment of any fee or other compensation to Canadian Borrowers)

to, at any time when an Event of Default has occurred and is continuing, enter into any Real Property of Canadian Borrowers and to use and operate any Equipment or other goods thereon and to utilize any Inventory of the Canadian Borrower in connection with the fulfillment and completion of any contractual or other obligations of Canadian Borrowers to their account debtors and customers.

(i) Accounts Collateral Agent shall apply the cash proceeds of Accounts Collateral actually received by Accounts Collateral Agent from any sale, lease, foreclosure or other disposition of the Accounts Collateral in the following order:

(i) first, to reimburse Revolving Administrative Agent and Accounts Collateral Agent for all costs and expenses of collection or enforcement including reasonable attorneys' fees and legal expenses;

(ii) second, to the extent that any unpaid US Revolving Obligations (other than US Revolving Obligations consisting of obligations under Hedging Agreements) are outstanding, to Revolving Administrative Agent in an amount equal to such US Revolving Obligations, to be applied as provided in Section 6.6 hereof;

(iii) third, to the extent not reimbursed by the Canadian Borrowers, to reimburse Canadian Collateral Agent for all costs and expenses of collection or enforcement including reasonable attorneys' fees and legal expenses;

(iv) fourth, to the extent that any unpaid Canadian Obligations (other than Canadian Obligations consisting of obligations under Hedging Agreements) are outstanding, to Canadian Agent in an amount equal to such Canadian Obligations, to be applied as provided in Section 6.6 hereof;

(v) fifth, to the extent that any Revolving Letter of Credit Accommodations remain outstanding, to cash collateral for such Revolving Letter of Credit Accommodations to be held by the Revolving Administrative Agent;

(vi) sixth, to the extent that any US Revolving Obligations under Hedging Agreements owed to any Person that was a US Revolving Lender, Revolving Administrative Agent or any of their respective Affiliates at the time such Hedging Agreement was entered into remains outstanding, to the holders of such US Revolving Obligations

(vii) seventh, to the extent that any US Revolving Obligations under Hedging Agreements owed to any Person that was a LC Facility Lender, LC Administrative Agent or any of their respective Affiliates at the time such Hedging Agreement was entered into remain outstanding, to the holders of such US Revolving Obligations;

(viii) eighth, so long as all Revolving Obligations have been paid in full in cash, to the extent any unpaid LC Facility Obligations are outstanding, to the LC Facility Collateral Agent in an amount equal to such unpaid LC Facility Obligations for application to the LC Facility Obligations as provided in Section 10.2(j), and

(ix) ninth, to the US Credit Parties or any other Person entitled thereto.

US Credit Parties shall remain liable to Secured Parties for the payment of any deficiency with interest at the highest rate provided for herein and all costs and expenses of collection or enforcement, including attorneys' fees and legal expenses.

(j) LC Facility Collateral Agent shall apply the cash proceeds of (A) subject to the last sentence of this Section 10.2(j), Non-Accounts Collateral in the manner specified in the Security Agreement or other applicable Security Documents, and (B) from and after the Discharge of Revolving Obligations, Accounts Collateral and any other collateral for the LC Facility Obligations pursuant to any Financing Agreement, actually received by LC Facility Collateral Agent from any sale, lease, foreclosure or other disposition of Collateral or other collateral for the LC Facility Secured Obligations in the following order:

(i) first, to reimburse LC Facility Administrative Agent and LC Facility Collateral Agent for all costs and expenses of collection or enforcement including attorneys' fees and legal expenses,

(ii) second, to reimburse the LC Facility Issuing Bank for any amount which has not been reimbursed to it with respect to any drawing under any LC Facility Letters of Credit;

(iii) third, to payment of the LC Facility Obligations, in whole or in part and in such order as LC Facility Collateral Agent may elect or the Majority LC Facility Lenders may direct, whether or not then due, and

(iv) fourth, to the US Credit Parties or any other Person legally entitled thereto.

US Credit Parties shall remain liable to LC Facility Secured Parties for the payment of any deficiency with interest at the highest rate provided for herein and all costs and expenses of collection or enforcement, including attorneys' fees and legal expenses.

Notwithstanding clause (A) above, in the event that the LC Facility Collateral Agent receives any proceeds from or in respect of Non-Accounts Collateral held in any Deposit Account into which funds were released from a US Blocked Account as contemplated by Section 6.3 at a time when any unpaid US Revolving Obligations remain outstanding then (i) if any Revolving Loans are outstanding that were incurred in violation of Section 9.10(b) (" **Default Revolving Loans**"), the LC Facility Collateral Agent shall apply the proceeds from such Deposit Account (but not from any other Non-Accounts Collateral), first, to pay all outstanding Revolving Obligations in respect of such Default Revolving Loans and second, in the order specified in the Security Agreement and (ii) if any Revolving Obligations are outstanding as a result of the Revolving Administrative Agents or the Revolving Lenders being required to refund amounts applied to repay Revolving Loans as a result of the application of any federal or state bankruptcy, insolvency or debtor/creditor law requiring repayment of preferential payments ("**Refunded Revolving Obligations**"), the LC Facility Collateral Agent shall apply the proceeds from such Deposit Account (but not from any other Non-Accounts Collateral), first, to pay all

outstanding Refunded Revolving Obligations, and second, in the order specified in the Security Agreement.

(k) Canadian Collateral Agent shall apply the cash proceeds of Canadian Accounts Collateral actually received by Accounts Collateral Agent from any sale, lease, foreclosure or other disposition of the Canadian Accounts Collateral:

(i) first, to reimburse Revolving Administrative Agent and Canadian Collateral Agent for all costs and expenses of collection or enforcement including attorneys' fees and legal expenses,

(ii) second, to the extent that any unpaid Canadian Obligations (other than Canadian Obligations consisting of obligations under Hedging Agreements) are outstanding, to the Revolving Administrative Agent in an amount equal to such Canadian Obligations to be applied as provided in Section 6.6 hereof,

(iii) third, to the extent that any Canadian Obligations under Hedging Agreements owed to any Person that was a Canadian Lender, Revolving Administrative Agent or any of their respective Affiliates at the time such Hedging Agreement was entered into remain outstanding, to the holders of such Canadian Revolving Obligations,

(iv) fourth, to the extent that any Canadian Obligations under Hedging Agreements owed to any Person that was an LC Facility Lender, LC Administrative Agent or any of their respective Affiliates at the time such Hedging Agreement was entered into remain outstanding, to the holders of such Canadian Obligations

(v) fifth, to the Canadian Borrowers or any other Person entitled thereto.

Canadian Borrowers shall remain liable to Canadian Secured Parties for the payment of any deficiency with interest at the highest rate provided for herein and all costs and expenses of collection or enforcement, including attorneys' fees and legal expenses.

(l) Regardless of the adequacy of any Collateral, if any of the Obligations are due and payable and have not been paid or any Event of Default shall have occurred, any deposits or other sums credited by or due from any Secured Party to any Credit Party which is liable for such Obligations and any securities or other property of any Credit Party which is liable for such Obligations in the possession of such Secured Party may, at any time, without demand or notice (any such notice being expressly waived by Credit Parties), in whole or in part, be applied to or set off by such Secured Party against the payment of such Obligations and any and all other liabilities or obligations, direct, or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, of such Credit Party to any Secured Party. Each of the Lenders agrees with each other Lender that (i) if an amount to be set off is to be applied to Obligations of any Credit Party owed to such Lender, is in excess of its Pro Rata Share or (ii) if such Lender shall receive from any Credit Party or any other source, whether by voluntary payment, exercise of the right of setoff, counterclaim, cross action, or by enforcement of the Obligations, by proceedings against any Credit Party at law or in equity or by proof thereof in bankruptcy, reorganization, liquidation, receivership or similar proceedings, or otherwise, any amount in excess of its

Pro Rata Share of the Obligations then, in either such case, will make such disposition and arrangements with the applicable Lenders with respect to such excess, either by way of distribution, pro tanto assignment of claims, subrogation or otherwise as shall result in each Lender holding Obligations of such Credit Party, receiving in respect of the Obligations owed it, equal to its Pro Rata Share as contemplated by this Agreement; *provided* that if all or any part of such excess payment is thereafter recovered from such Lender, such disposition and arrangements shall be rescinded and the amount restored to the extent of such recovery, but without interest and provided further that any set-off of, (x) Accounts Collateral shall be subject to Section 10.2(i), (y) Canadian Accounts Collateral shall be subject to Section 10.2(k) and (z) Non-Accounts Collateral shall be subject to Section 10.2(j). ANY AND ALL RIGHTS TO REQUIRE ANY SECURED PARTY TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF ANY CREDIT PARTY ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

(m) Canadian Collateral Agent may, at any time when any Event of Default has occurred and is continuing, appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or any employee or employees of such Collateral Agent or not, to be a receiver or receivers (hereinafter called a "**Receiver**", which term when used herein shall include a receiver and manager) of any Canadian Borrower (including any interest, income or profits therefrom) and may remove any Receiver so appointed and appoint another in his/her stead. Any such Receiver shall, so far as concerns responsibility for his/her acts, be deemed the agent of the Canadian Borrowers and not Canadian Collateral Agent, and Canadian Collateral Agent shall not be in any way responsible for any misconduct, negligence or non-feasance on the part of any such Receiver, his/her servants, agents or employees. Subject to the provisions of the instrument appointing him/her, any such Receiver shall have power to take possession of any or all of the Canadian Accounts Collateral, to preserve such Collateral or its value, to carry on or concur in carrying on all or any part of the business of the applicable Canadian Borrower and to sell, lease, license or otherwise dispose of or concur in selling, leasing, licensing or otherwise disposing of such Collateral. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including the applicable Canadian Borrower, at any time when an Event of Default has occurred and is continuing, enter upon, use and occupy all premises owned or occupied by the applicable Canadian Borrower wherein Canadian Accounts Collateral may be situate, maintain Canadian Accounts Collateral upon such premises, borrow money on a secured or unsecured basis and use Canadian Accounts Collateral directly in carrying on the applicable Canadian Borrower's business or as security for loans or advances to enable the Receiver to carry on applicable Canadian Borrower's business or otherwise, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by Canadian Collateral Agent, all proceeds of Canadian Accounts Collateral received from time to time by such Receiver in carrying out his/her appointment shall be received in trust for and paid over to Canadian Collateral Agent (or upon Canadian Collateral Agent's direction to Canadian Lender). Every such Receiver may, in the discretion of the Canadian Collateral Agent be vested with all or any of the rights and powers of Canadian Collateral Agent. Canadian Collateral Agent may, either directly or through its agents or nominees, exercise any or all powers and rights given by Canadian Collateral Agent to a Receiver by virtue of the foregoing provisions of this paragraph.

(n) On and after an Event of Default and for so long as the same is continuing, US Credit Parties shall pay all costs, charges and expenses incurred by any Collateral Agent, any Secured Party or any Receiver or any nominee or agent of any Agent (and Canadian Borrowers shall pay all costs, charges and expenses incurred by any Canadian Secured Party or any Receiver or any nominee or agent of any Canadian Secured Party), whether directly or for services rendered (including, without limitation, solicitor's costs on a solicitor and his own client basis, auditor's costs, other legal expenses and Receiver remuneration) in enforcing this Agreement or any other Financing Agreement and in enforcing or collecting Obligations and all such expenses together with any money owing as a result of any borrowing permitted hereby shall be a charge on the proceeds of realization and shall be secured hereby.

(o) If any Accounts Collateral or any other payment made with respect to the Revolving Obligations received by the Revolving Lenders is required to be returned under any circumstance (the "**Returned Amount**"), then the LC Facility Administrative Agent and the LC Facility Lenders shall to the extent Accounts Collateral were received by the LC Facility Administrative Agent or the LC Facility Lenders, immediately reimburse the Revolving Lenders up to an amount equal to such Returned Amount.

SECTION 11. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW.

11.1 Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.

(a) The validity, interpretation and enforcement of this Agreement and the other Financing Agreements (except as otherwise expressly provided therein) and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of The State of New York (without giving effect to principles of conflicts of law).

(b) Each Credit Party, each Agent, and each Lender irrevocably consent and submit to the non-exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, whichever the Administrative Agents may elect, and in addition, Credit Parties irrevocably consent and submit to the non-exclusive jurisdiction of the Ontario Superior Court of Justice, in each case, whichever the Administrative Agents may elect and waive any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Financing Agreements or in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Agreement or any of the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Accounts Collateral Agent (with respect to the Accounts Collateral) and LC Facility Collateral Agent (with respect to the Non-Accounts Collateral) and Lenders shall have the right to bring any action or proceeding against any Credit Party or its property in the courts of any other jurisdiction which such Collateral Agent deems necessary or appropriate in order to realize on the applicable Collateral or to otherwise enforce its rights against any Credit Party or its property).

(c) Each Credit Party hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the US mails, or, at Agent's option, by service upon Credit Parties in any other manner provided under the rules of any such courts. Within thirty (30) days after such service, Credit Parties shall appear in answer to such process, failing which Credit Parties shall be deemed in default and judgment may be entered by Lender against Credit Parties for the amount of the claim and other relief requested.

(d) EACH CREDIT PARTY, EACH AGENT, AND EACH LENDER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. EACH CREDIT PARTY, EACH AGENT, AND EACH LENDER EACH 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 CREDIT PARTY OR ANY LENDER MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) No Agent nor any Lender shall have any liability to any Credit Party (whether in tort, contract, equity or otherwise) for losses suffered by any Credit Party in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on such Agent or such Lender, that the losses were the result of acts or omissions constituting gross negligence or willful misconduct of such Agent or such Lender. In any such litigation, each Agent and each Lender shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Agreement. Except as prohibited by law, each Credit Party waives any right which it may have to claim or recover in any litigation with any Agent and any Lender any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. Each Credit Party: (i) certifies that no Agent, no Lender nor any representative, agent or attorney acting for or on behalf of any Agent or any Lender has represented, expressly or otherwise, that such Agent or such Lender would not, in the event of litigation, seek to enforce any of the waivers provided for in this Agreement or any of the other Financing Agreements, and (ii) acknowledges that in entering into this Agreement and the other Financing Agreements, each Agent and Lenders are relying upon, among other things, the waivers and certifications set forth in this Section 11.1 and elsewhere herein and therein.

11.2 Waiver of Notices. Each Credit Party hereby expressly waives demand, presentment, protest and notice of protest and notice of dishonor with respect to any and all instruments and chattel paper, included in or evidencing any of the Obligations or the Collateral, and any and all other demands and notices of any kind or nature whatsoever with respect to the Obligations, the Collateral and this Agreement, except such as are expressly provided for herein. No notice to or demand on any Credit Party which any Agent or any Lender may elect to give shall entitle any Credit Party to any other or further notice or demand in the same, similar or other circumstances.

11.3 Amendments and Waivers. Except as set forth in this Section 11.3, neither this Agreement nor any provision hereof shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement signed by authorized officers of Agent and Majority Lenders, and as to amendments, as also signed by an authorized officer of each Credit Party; *provided* that:

(a) without the written consent of each Administrative Agent and each affected Lender, no such amendment, waiver or consent shall:

(i) reduce the principal of, or interest on, any amount payable or reimbursable to any Lender hereunder, other than those payable only to an Agent in its capacity as such, which may be reduced by such Agent unilaterally;

(ii) postpone any date fixed for any payment of principal of, or interest on, any amounts payable hereunder, other than those payable only to an Agent in its capacity as such, which may be postponed by such Agent unilaterally;

(iii) except as otherwise permitted hereunder or under any of the Financing Agreements, release any Significant Subsidiary for the performance of any its obligations hereunder or under any of the Financing Agreements;

(iv) amend any provision of this Agreement that requires the consent of all Lenders to consent to or waive any breach thereof;

(v) amend the definition of the term “Majority Lenders”;

(vi) amend this Section 11.3;

(vii) extend the date on which the LC Facility Deposits are required to be returned to LC Facility Lenders; or

(viii) change the provisions of this Agreement dealing with the application of proceeds from Collateral;

(b) without the written consent of Revolving Administrative Agent and each affected Revolving Lender, no such amendment, waiver or consent shall:

(i) increase or decrease the Revolving Maximum Credit, the US Revolving Maximum Credit or Canadian Maximum Credit or any Revolving Lender's Revolving Loan Commitment or Pro Rata Share;

(ii) release any substantial portion of the Accounts Collateral or Canadian Accounts Collateral unless otherwise permitted pursuant to the terms of this Agreement;

(iii) increase any advance percentage contained in the definition of the term US Borrowing Base or Canadian Borrowing Base;

(iv) amend the definition of the term "Majority Revolving Lenders"; or

(v) decrease any interest rate or fees payable hereunder to any Revolving Lender;

(c) without the written consent of LC Facility Administrative Agent and each affected LC Facility Lender, no such amendment, waiver or consent shall:

(i) increase the amount required to be funded by such LC Facility Lender;

(ii) decrease any interest rate or fees payable hereunder to any LC Facility Lender;

(iii) release any substantial portion of the Non-Accounts Collateral, unless otherwise permitted pursuant to the terms of this Agreement; or

(iv) amend the definition of the term "Majority LC Facility Lenders";

(d) without the written consent of LC Facility Administrative Agent, the LC Facility Issuing Bank and the Majority LC Facility Lenders, no such amendment, waiver or consent shall change any provision of Section 2.7, 2.8 or 2.9 or any other provision relating exclusively to the LC Facility;

(e) without the written consent of the Revolving Administrative Agent and the Majority Revolving Lenders, no such amendment, waiver or consent shall change or amend the definition of "Canadian Obligations" or "US Revolving Obligations" or any provision of Section 2.1, 2.2, 2.4, 3, 5.1, 5.2, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 10.2(a), 10.2(c), 10.2(d), 10.2(e), 10.2(h), 10.2(i), 10.2(k), 11.3(b), 11.3(e), 12.1(c) or any other provision relating exclusively to the Revolving Facility;

provided that, other than (b)(ii), no consent of the LC Facility Administrative Agent or the LC Facility Lenders shall be required with respect to subsection (b)(i), (iii), (iv) or (v) above and the consent of the Revolving Facility Administrative Agent or the Revolving Lenders shall not be

required with respect to subsection (c) above. No Agent nor any Lender shall, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of their rights, powers and/or remedies unless such waiver shall be in writing and signed by an authorized officer of such Agent or such Lender. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by any Agent and/or Lender of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Agent and Lender would otherwise have on any future occasion, whether similar in kind or otherwise.

11.4 Waiver of Counterclaims. Each Credit Party waives all rights to interpose any claims, deductions, setoffs or counterclaims of any nature (other then compulsory counterclaims) in any action or proceeding with respect to this Agreement, the Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto.

11.5 Costs and Expenses. The Credit Parties shall pay (i) all reasonable out-of-pocket expenses incurred by the Agents and their Affiliates (including the reasonable fees, charges and disbursements of counsel for the Agents), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other related documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the LC Facility Issuing Bank in connection with the issuance, amendment, renewal or extension of any letter of credit or any demand for payment thereunder and (iii) all reasonable out-of-pocket expenses incurred by the Agents, the LC Facility Issuing Bank (and, if an Event of Default under Section 10.1(a)(i) shall have occurred and be continuing, any Lender) or the related documents (including the reasonable fees, charges and disbursements of counsel for the Agents, the LC Facility Issuing Bank and, if an Event of Default under Section 10.1(a)(i) shall have occurred and be continuing, any Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other related documents, including its rights under this section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations with respect of such Loans or Letters of Credit.

11.6 Indemnification. Each Credit Party shall indemnify and hold each Agent and each Lender, and their respective directors, agents, employees and counsel, harmless from and against any and all losses, claims, damages, liabilities, costs or expenses imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other Financing Agreements, or any undertaking or proceeding related to any of the transactions contemplated hereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs, and the fees and expenses of counsel. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 11.5 may be unenforceable because it violates any law or public policy, each Credit Party shall pay the maximum portion which it is permitted to pay under applicable law to each Agent and Lenders in satisfaction of indemnified

matters under this Section 11.5. The foregoing indemnity shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

11.7 Currency Indemnity. If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any of the other Financing Agreements, it becomes necessary to convert into the currency of such jurisdiction (the " **Judgment Currency**") any amount due under this Agreement or under any of the other Financing Agreements in any currency other than the Judgment Currency (the " **Currency Due**"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose, "rate of exchange" means the rate at which the Revolving Administrative Agent and/or the LC Facility Administrative Agent, as the case may be, is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by the Revolving Administrative Agent and/or the LC Facility Administrative Agent, as the case may be, of the amount due, Credit Parties will, on the date of receipt by the applicable Agent, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by such Administrative Agent and Revolving Lenders and/or the LC Facility Lenders on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by such Administrative Agent is the amount then due under this Agreement or such other of the Financing Agreements in the Currency Due. If the amount of the Currency Due which the Revolving Administrative Agent and/or the LC Facility Administrative Agent, as the case may be, is able to purchase is less than the amount of the Currency Due originally due to it, Credit Parties shall indemnify and save the Revolving Administrative Agent and/or the LC Facility Administrative Agent, as the case may be, and Revolving Lenders and/or the LC Facility Lenders harmless from and against loss or damage arising as a result of such deficiency. The indemnity contained herein shall constitute an obligation separate and independent from the other obligations contained in this Agreement and the other Financing Agreements, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Revolving Administrative Agent and/or the LC Facility Administrative Agent, as the case may be, from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement or any of the other Financing Agreements or under any judgment or order.

SECTION 12. TERM OF AGREEMENT; MISCELLANEOUS.

12.1 Term.

(a) Upon any termination of the LC Facility and Revolving Facility, each Credit Party shall, jointly and severally, pay to the applicable Administrative Agents for the benefit of Lenders, in full, all outstanding and unpaid Obligations of such Credit Party and shall furnish cash collateral to the applicable Administrative Agent (or at such Administrative Agent's option, a letter of credit issued for the account of such Credit Parties and at such Credit Parties' expense, in form and substance satisfactory to such Administrative Agent, by an issuer acceptable to the issuer of any Revolving Letter of Credit Accommodation or LC Facility Letter of

Credit and payable to such issuer as beneficiary) in such amounts as such Administrative Agent determines are reasonably necessary to secure (or reimburse) the applicable Administrative Agent and Secured Parties from loss, cost, damage or expense, including attorneys' fees and legal expenses, in connection with any contingent Obligations, including issued and outstanding LC Facility Letters of Credit or Revolving Letter of Credit Accommodations and checks or other payments provisionally credited to the Obligations and/or as to which any Secured Party has not yet received final and indefeasible payment. Such payments in respect of the Obligations and cash collateral shall be remitted by wire transfer in Federal funds to such bank account of the applicable Administrative Agent, as such Administrative Agent may, in its discretion, designate in writing to Credit Parties for such purpose. Interest shall be due until and including the next business day, if the amounts so paid by Credit Parties to the bank account designated by Agent are received in such bank account later than 12:00 noon, Boston, Massachusetts time.

(b) No termination of this Agreement or the other Financing Agreements shall relieve or discharge Credit Parties of their respective duties, obligations and covenants under this Agreement or the other Financing Agreements until all Obligations of such Credit Parties have been fully and finally discharged and paid. The LC Facility Collateral Agent's continuing security interest in the Collateral and the rights and remedies of each LC Facility Secured Party hereunder, under the other Financing Agreements and applicable law, shall remain in effect until all LC Facility Obligations secured by such Collateral have been fully and finally discharged and paid and the LC Facility Commitment and all LC Facility Letters of Credit thereunder have been terminated. The Accounts Collateral Agent's continuing security interest in the Accounts Collateral and the rights and remedies of each Revolving Secured Party hereunder, under the other Financing Agreements and applicable law, shall remain in effect until the Discharge of Revolving Obligations and the Revolving Loan Commitment has terminated. Accordingly, each Credit Party waives any rights which it may have (i) under the UCC or the PPSA to demand the filing of UCC amendments to partially release the Non-Accounts Collateral or to request Mortgage releases with respect to the Non-Accounts Collateral, and no Agent shall be required to send such amendments or releases to any Credit Party, or to file or record them with any filing office, unless and until all of the LC Facility Obligations of such Credit Party secured by such Non-Accounts Collateral are paid and satisfied in full in immediately available funds and the LC Facility Commitment and all LC Facility Letters of Credit have been terminated, and (ii) under the UCC or the PPSA to demand the filing of UCC amendments to partially release the Accounts Collateral, and no Agent shall be required to send such amendments to any Credit Party or to file them with any filing office unless and until the Discharge of Revolving Obligations and the Revolving Loan Commitment has terminated.

12.2 Interpretative Provisions.

(a) All terms used herein which are defined in Article 1 or Article 9 of the UCC shall have the meanings given therein unless otherwise defined in this Agreement.

(b) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

(c) All references to Credit Party and Lender pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns.

(d) The words “hereof”, “herein”, “hereunder”, “this Agreement” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(e) The word “including” when used in this Agreement shall mean “including, without limitation”.

(f) All references to the term “good faith” used herein when applicable to Agent or Lenders shall mean, notwithstanding anything to the contrary contained herein or in the UCC, honesty in fact in the conduct or transaction concerned. Credit Party shall have the burden of proving any lack of good faith on the part of the Agents or Lenders alleged by Credit Party at any time.

(g) An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 11.3 or is cured in a manner satisfactory to the Agents and Majority Lenders, if such Event of Default is capable of being cured as determined by the Agents and Majority Lenders.

(h) Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations hereunder shall be computed unless otherwise specifically provided herein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the consolidated financial statements of Parent most recently received by Agents and Lenders prior to the date hereof.

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

(j) Unless otherwise expressly provided herein, (i) references herein to any agreement, document or instrument shall be deemed to include all subsequent amendments, modifications, supplements, extensions, renewals, restatements or replacements with respect thereto, but only to the extent the same are not prohibited by the terms hereof or of any other Financing Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, recodifying, supplementing or interpreting the statute or regulation.

(k) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(l) This Agreement and other Financing Agreements may use several different limitations, tests or measurements to regulate the same or similar matters. All such

limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

(m) This Agreement and the other Financing Agreements are the result of negotiations among and have been reviewed by counsel to Lender and the other parties, and are the products of all parties. Accordingly, this Agreement and the other Financing Agreements shall not be construed against Agents and Lenders merely because of Agent's involvement in their preparation.

12.3 Notices. All notices, requests and demands hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next Business Day, one (1) Business Day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section 12.3):

If to Credit Parties:	c/o Clean Harbors, Inc. 1501 Washington Street Braintree, MA 02184 Attention: Chief Financial Officer Telephone No.: (617) 849-1800 Telecopy No.: (617) 848-1632
with a copy to:	Davis Malm & D'Agostine, P.C. One Boston Place Boston, MA 02108-4470 Attention: C. Michael Malm, Esq. Telephone No.: 617-367-2500 Telecopy No.: 617-523-6215
If to Revolving Administrative Agent, Accounts Collateral Agent, Revolving Arranger and Revolving Lenders:	Fleet Capital Corporation One Federal Street Boston, MA 02110 Attention: Mark B. Schafer, Vice President Telephone No.: 617-654-1187 Telecopy No.: 617-654-1167
with a copy to:	Bingham McCutchen LLP 150 Federal Street Boston, MA 02110 Attention: Cynthia F. Barnett, Esq. Telephone No.: 617-951-8539 Telecopy No.: 617-951-8736

If to Canadian Collateral Agent:	Fleet Capital Global Finance Inc. One Federal Street Boston, MA 02110 Attention: Mark B. Schafer, Vice President Telephone No.: 617-654-1187 Telecopy No.: 617-654-1167
with a copy to:	Bingham McCutchen LLP 150 Federal Street Boston, MA 02110 Attention: Cynthia F. Barnett, Esq. Telephone No.: 617-951-8539 Telecopy No.: 617-951-8736
If to LC Facility Administrative Agent, LC Facility Collateral Agent and LC Facility Lenders:	Credit Suisse First Boston One Madison Avenue New York, NY 10010 CSFB Loan Services Group Attention: Carolyn Tee Telephone No.: (212) 325-9936 Telecopy No.: (212) 325-8304
with a copy to:	Cahill Gordon & Reindel LLP 80 Pine Street New York, NY 10005 Attention: Susanna M. Suh, Esq. Telephone No.: 212-701-3000 Telecopy No.: 212-269-5420

12.4 Partial Invalidity. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

12.5 Successors. This Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon and inure to the benefit of and be enforceable by Agents, Lenders, Credit Parties, and their respective successors and assigns, except that no Credit Party may assign its rights under this Agreement, the other Financing Agreements and any other document referred to herein or therein without the prior written consent of each Administrative Agent and Lenders

12.6 Assignment by Lenders. (a) Except as provided herein, each Revolving Lender may assign to one or more Eligible Assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Pro Rata Share) together with the Loans at the time owing to it and its participating interest in the risk relating to any Revolving Letter of Credit Accommodations; *provided* that (i) unless such assignment is to an Affiliate of,

or a successor to, a Lender, an Approved Fund of such Lender or to a Person which is, at the time of such assignment, a Lender hereunder, the Revolving Administrative Agent and, so long as no Default or Event of Default shall have occurred and be continuing, Parent, shall have given its prior written consent to such assignment (with such consent not to be unreasonably withheld), (ii) each assignment shall be in an amount that is not less than the lesser of (x) $1,000,000 and (y) the aggregate amount of such assigning Lender's Revolving Loan Commitment and, if greater, in whole multiples of $1,000,000 (or if less, the remaining amount thereof), and (iv) the parties to such assignment shall execute and deliver to the Revolving Administrative Agent for recording in the Revolving Register an Assignment and Acceptance, subject to such assignment. Upon such execution, delivery, acceptance and recording, from and after the effective date for such assignment specified in each Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Lender hereunder, and (ii) the assigning Lender shall, to the extent provided in such assignment and upon payment to the Revolving Administrative Agent of the registration fee, if any, referred to in Section 12.8, be released from its obligations under this Agreement.

(b) Except as provided herein, each LC Facility Lender may assign to one or more Eligible Assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Pro Rata Share) together with such LC Facility Lender's Credit-Linked Deposit and its Participations in LC Facility Letters of Credit); *provided* that (i) unless such assignment is to an Affiliate of, or a successor to, an LC Facility Lender, an Approved Fund of such LC Facility Lender or to a Person which is, at the time of such assignment, an LC Facility Lender hereunder, the LC Facility Administrative Agent and LC Facility Issuing Bank and except in connection with the initial syndication of the LC Facility Deposits and participations in LC Facility Letters of Credit, so long as no Default or Event of Default shall have occurred and be continuing, Parent shall have given its prior written consent to such assignment (with such consent not to be unreasonably withheld), (ii) each assignment shall be in an amount that is not less than the lesser of (x) $1,000,000 of Credit-Linked Deposits and participations in LC Facility LC Letters of Credit and (y) the aggregate Credit-Linked Deposits and participations in LC Facility LC Letters of Credit held by such LC Facility Lender and, if greater, in whole multiples of $1,000,000 (or if less, the remaining amount thereof), and (iii) the parties to each such assignment shall (x) electronically execute and deliver to the LC Facility Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the LC Facility Administrative Agent (which initially shall be ClearPar, LLC) or (y) manually execute and deliver to the LC Facility Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of US$3,500 and, in each case, an Administrative Questionnaire (unless such assignment is to an LC Facility Lender) and such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be reasonably required by the LC Facility Administrative Agent. Upon such execution, delivery, acceptance and recording, from and after the effective date for such assignment specified in each Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of an LC Facility Lender hereunder, and (ii) the assigning LC Facility Lender shall, to the extent provided in such assignment and upon payment to the LC Facility Administrative Agent of the registration fee, if any, referred to above, be released from its obligations under this Agreement.

12.7 Certain Representations and Warranties; Limitations; Covenants. By executing and delivering an Assignment and Acceptance, the parties to the assignment thereunder confirm to and agree with each other and the other parties hereto as follows:

(a) other than the representation and warranty that it is legally authorized to enter into the Assignment and Acceptance and the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim, the assigning Lender makes no representation or warranty, express or implied, and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, the other Financing Agreements or any other instrument or document furnished pursuant hereto or the attachment, perfection or priority of any security interest or mortgage;

(b) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Credit Parties and their Subsidiaries, or the performance or observance by Credit Parties and their Subsidiaries of any of their obligations under this Agreement or any of the other Financing Agreements or any other instrument or document furnished pursuant hereto or thereto;

(c) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements referred to in Section 9.6 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;

(d) such assignee will, independently and without reliance upon the assigning Lender, the 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 decisions in taking or not taking action under this Agreement;

(e) such assignee represents and warrants that it is an Eligible Assignee;

(f) such assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Financing Agreements as are delegated to the Agent by the terms hereof or thereof, together with such powers as are reasonably incidental thereto;

(g) such assignee agrees that it is bound by and will perform in accordance with their terms all of the obligations that by the terms of this Agreement and other Financing Agreements are required to be performed by it as a Lender;

(h) such assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance; and

(i) such assignee acknowledges that it has made arrangements with the assigning Lender satisfactory to such assignee with respect to its share of interest, letter of credit fees and other fees payable to Lenders hereunder.

12.8 Register.

(a) The Revolving Administrative Agent shall maintain a copy of each Assignment and Acceptance delivered to it and a register or similar list (the "**Revolving Register**") for the recordation of the names and addresses of the Revolving Lenders and the Pro Rata Share of, and principal amount of the Revolving Loans owing to and participations in Revolving Letter of Credit Accommodations purchased by, the Revolving Lenders from time to time. The entries in the Revolving Register shall be conclusive, in the absence of manifest error, and Credit Parties, the Revolving Administrative Agent and the Revolving Lenders may treat each Person whose name is recorded in the Revolving Register as a Revolving Lender hereunder for all purposes of this Agreement. Upon each such recordation, the assigning Revolving Lender agrees to pay to the Revolving Administrative Agent a registration fee in the sum of $3,500. The Revolving Register shall be available for inspection by Credit Parties and the Revolving Lenders at any reasonable time and from time to time upon reasonable prior notice.

(b) The LC Facility Administrative Agent shall maintain a Register (the " **LC Facility Register**") including a subaccount for each LC Facility Lender, in which LC Facility Register and subaccounts (taken together) shall be recorded (i) the amount of each Credit-Linked Deposit, (ii) the amount of LC Facility LC Disbursements and amounts payable pursuant to Section 2.7(b) in respect of each such Credit-Linked Deposit and (iii) the amount of any reductions to the Total Credit-Linked Deposits and the reduction in the amount of Credit-Linked Deposits of each LC Facility Lender as a result thereof and the amount of any sum received by the Administrative Agent hereunder from any Credit Party in respect of any LC Facility Obligations and each LC Facility Lender's Pro Rata Share thereof. The entries in the LC Facility Register shall be conclusive, in the absence of manifest error, and US Credit Parties, the LC Facility Administrative Agent and the LC Facility Lenders may treat each Person whose name is recorded in the LC Facility Register as a LC Facility Lender hereunder for all purposes of this Agreement. The LC Facility Register shall be available for inspection by US Credit Parties and the LC Facility Lenders at any reasonable time and from time to time upon reasonable prior notice.

12.9 Participations. Each Lender may sell participations to one or more banks or other entities in all or a portion of such Lender's rights and obligations under this Agreement and the other Financing Agreements; *provided* that (i) any such sale or participation shall not affect the rights and duties of the selling Lender hereunder to the Credit Parties, and (ii) the only rights granted to the participant pursuant to such participation arrangements with respect to waivers, amendments or modifications of the Financing Agreements shall be the rights to approve waivers, amendments or modifications that would reduce the principal of or the interest rate on any Loans, extend the term or increase the amount of the Pro Rata Share of such Lender as it relates to such participant, reduce the amount of the fees payable under this Agreement to which such participant is entitled or extend any regularly scheduled payment date for principal or interest.

12.10 Assignee or Participant Affiliated with Any Credit Party . If any assignee Lender is an Affiliate of Credit Party, then any such assignee Lender shall have no right to vote as a Lender hereunder or under any of the other Financing Agreements for purposes of granting consents or waivers or for purposes of agreeing to amendments or other modifications to any of the Financing Agreements or for purposes of making requests to the Agent pursuant to Section 10,

and the determination of the Majority Lenders shall for all purposes of this Agreement and the other Financing Agreements be made without regard to such assignee Lender's interest in any of the Obligations. If any Lender sells a participating interest in any of the Obligations to a participant, and such participant is a Credit Party or an Affiliate of a Credit Party, then such transferor Lender shall promptly notify the Agent of the sale of such participation. Any such transferor Lender shall have no right to vote as a Lender hereunder or under any of the other Financing Agreements for purposes of granting consents or waivers or for purposes of agreeing to amendments or modifications to any of the Financing Agreements or for purposes of making requests to the Agent pursuant to Section 10 to the extent that such participation is beneficially owned by a Credit party or any Affiliate of a Credit Party, and the determination of the Majority Lenders shall for all purposes of this Agreement and the other Financing Agreements be made without regard to the interest of such transferor Lender in the Loans to the extent of such participation.

12.11 Miscellaneous Assignment Provisions. Any assigning Lender shall retain its rights to be indemnified pursuant to Sections 6.8, 9.4, 11.5 and 11.6 with respect to any claims or actions arising prior to the date of such assignment. If FCC transfers all of its interest, rights and obligations under this Agreement (other than to an Affiliate), the Agents shall, in consultation with the Credit Parties and with the consent of the Majority Lenders, appoint another financial institution to act as a Reference Bank hereunder. Anything contained in this Section 12.11 to the contrary notwithstanding, any Lender may at any time pledge all or any portion of its interest and rights under this Agreement to any of the twelve Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C. § 341. No such pledge or the enforcement thereof shall release the pledgor Lender from its obligations hereunder or under any of the other Financing Agreements.

12.12 Confidentiality.

(a) Agent and Lenders shall use all reasonable efforts to keep confidential, in accordance with its customary procedures for handling confidential information and safe and sound lending practices, any non-public information supplied to it by Credit Parties pursuant to this Agreement which is clearly and conspicuously marked as confidential at the time such information is furnished by Credit Parties to Agent and Lenders, *provided* that nothing contained herein shall limit the disclosure of any such information: (i) to the extent required by statute, rule, regulation, subpoena or court order, (ii) to bank examiners and other regulators, auditors and/or accountants, (iii) in connection with any litigation to which Agent or any such Lender is a party, (iv) to any assignee or participant (or prospective assignee or participant) so long as such assignee or participant (or prospective assignee or participant) shall have first agreed in writing to treat such information as confidential in accordance with this Section 12.12, or (v) to counsel for Agent or any Lender or any participant or assignee (or prospective participant or assignee).

(b) In no event shall this Section 12.12 or any other provision of this Agreement or applicable law be deemed: (i) to apply to or restrict disclosure of information that has been or is made public by any Credit Party or any third party without breach of this Section 12.12 or otherwise become generally available to the public other than as a result of a disclosure in violation hereof, (ii) to apply to or restrict disclosure of information that was or becomes

available to Agent or any Lender on a non-confidential basis from a person other than a Credit Party, (iii) require Agent or any Lender to return any materials furnished by Credit Parties to Agent or any Lenders, or (iv) prevent Agent and Lenders from responding to routine informational requests in accordance with the Code of Ethics for the Exchange of Credit Information promulgated by The Robert Morris Associates or other applicable industry standards relating to the exchange of credit information. The obligations of Agent and Lenders under this Section 12.12 shall supersede and replace the obligations of Agent and Lenders under any confidentiality letter signed prior to the date hereof

12.13 Entire Agreement. This Agreement, the other Financing Agreements, any supplements hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith represents the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersede all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written. In the event of any inconsistency between the terms of this Agreement and any schedule or exhibit hereto, the terms of this Agreement shall govern.

12.14 Counterparts, Etc. This Agreement or any of the other Financing Agreements may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement "or any of the other Financing Agreements by telefacsimile shall have the same force and effect as the delivery of an original executed counterpart of this Agreement or any of such other Financing Agreements. Any party delivering an executed counterpart of any such agreement by telefacsimile shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

12.15 Choice of Language. The parties hereto confirm that they have requested that this Agreement and all documents related hereto be drafted in English. *Les parties aux presentes ont exige que cette convention ainsi que tout document connexe soient rediges en anglais.*

SECTION 8. THE AGENTS.

13.1 Authorization.

(a) The Revolving Administrative Agent, LC Facility Administrative Agent, Accounts Collateral Agent, Canadian Collateral Agent and LC Facility Collateral Agent are authorized to take such action on behalf of each of the Revolving Lenders and LC Facility Lenders, respectively, and to exercise all such powers as are hereunder and under any of the other Financing Agreements and any related documents delegated to such Agent, together with such powers as are reasonably incident thereto, including the authority, without the necessity of any notice to or further consent of the Lenders, from time to time to take any action with respect to any Collateral or the Financing Agreements which may be necessary to perfect, maintain perfected or insure the priority of the security interest in and Liens upon the Collateral granted pursuant hereto or to the other Financing Agreements, and *provided* that no duties or responsibilities not expressly assumed herein or therein shall be implied to have been assumed by the Agents. Each

Secured Party hereby agrees that the Accounts Collateral Agent is authorized to take any action on behalf of Secured Parties with respect to Accounts Collateral and each LC Facility Secured Party hereby agrees that LC Facility Collateral Agent is authorized to take any action on behalf of LC Facility Secured Parties with respect to Non-Accounts Collateral.

(b) The relationship between the Agents and each of the Lenders is that of an independent contractor. The use of the term "Agent" is for convenience only and is used to describe, as a form of convention, the independent contractual relationship between the Agents and each of the Lenders. Nothing contained in this Agreement nor the other Financing Agreements shall be construed to create an agency, trust or other fiduciary relationship between the Agents and any of the Lenders.

(c) As independent contractors empowered by the Lenders to exercise certain rights and perform certain duties and responsibilities hereunder and under the other Financing Agreements, the Accounts Collateral Agent, the Canadian Collateral Agent and the LC Facility Collateral Agent are nevertheless each a "representative" of the Secured Parties, the Canadian Secured Parties and the LC Facility Secured Parties, respectively, as that term is defined in Article 1 of the UCC, for purposes of actions for the benefit of such Secured Parties with respect to all collateral security and guaranties contemplated by the Financing Agreements. Such actions include the designation of such Collateral Agent as "secured party", "mortgagee" or the like on all financing statements and other documents and instruments, whether recorded or otherwise, relating to the attachment, perfection, priority or enforcement of any security interests, mortgages or deeds of trust in collateral security intended to secure the payment or performance of any of the Obligations, all for the benefit of the applicable Secured Parties.

(d) Notwithstanding anything to the contrary in this Agreement, neither the Revolving Credit Arranger, CSFB and GSCP, as Joint Lead Arrangers and Joint Lead Bookrunners under the LC Facility, GSCP as Syndication Agent under the LC Facility, nor Credit Suisse First Boston, acting through its Cayman Islands branch as Documentation Agent under the LC Facility, in such respective capacities, shall have any obligations, duties or responsibilities, or shall incur any liabilities, under this Agreement or any other Financing Agreement.

(e) It is the intent of this Agreement and the other Financing Agreements that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Financing Agreements, and in particular in case of the enforcement of any of the Financing Agreements, or in case any Collateral Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Financing Agreements or take any other action which may be desirable or necessary in connection therewith, it may be necessary that such Collateral Agent appoint an additional individual or institution as a separate trustee, co-trustee, collateral agent or collateral co-agent (any such additional individual or institution being referred to herein individually as a " **Supplemental Collateral Agent**" and collectively as "**Supplemental Collateral Agents**").

In the event that any Collateral Agent appoints a Supplemental Collateral Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or

intended by this Agreement or any of the other Financing Agreements to be exercised by or vested in or conveyed to such Collateral Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Collateral Agent to the extent, and only to the extent, necessary to enable such Supplemental Collateral Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Financing Agreements and necessary to the exercise or performance thereof by such Supplemental Collateral Agent shall run to and be enforceable by either such Collateral Agent or such Supplemental Collateral Agent, and (ii) the provisions of this Section 13 and of Sections 9.23 and 13.8 that refer to such Collateral Agent shall inure to the benefit of such Supplemental Collateral Agent and all references therein to such Collateral Agent shall be deemed to be references to such Agent and/or such Supplemental Collateral Agent, as the context may require.

Should any instrument in writing from Parent or any other Credit Party be required by any Supplemental Collateral Agent so appointed by any Collateral Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, Parent shall, or shall cause such Credit Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by any Collateral Agent. In case any Supplemental Collateral Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Collateral Agent, to the extent permitted by law, shall vest in and be exercised by such Collateral Agent until the appointment of a new Supplemental Collateral Agent.

13.2 Employees and Agents. The Agents may exercise their powers and execute their duties by or through employees or agents and shall be entitled to take, and to rely on, advice of counsel concerning all matters pertaining to their rights and duties under this Agreement and the other Financing Agreements. Each Agent may utilize the services of such Persons as such Agent in its sole discretion may determine, and all reasonable fees and expenses of any such Persons shall be paid by the Parent.

13.3 No Liability. Neither the Agents nor any of their respective shareholders, directors, officers or employees nor any other Person assisting them in their duties nor any agent or employee thereof, shall be liable for any waiver, consent or approval given or any action taken, or omitted to be taken, in good faith by it or them hereunder or under any of the other Financing Agreements, or in connection herewith or therewith, or be responsible for the consequences of any oversight or error of judgment whatsoever, unless it is determined by a final and non-appealable judgment or court order binding on such Agent, that the acts or omissions of such Agent or such other Person constituted willful misconduct or gross negligence.

13.4 No Representations.

(a) The Agents shall not be responsible for the execution or validity or enforceability of this Agreement, the LC Facility Letters of Credit, the Revolving Letter of Credit Accommodations, any of the other Financing Agreements or any instrument at any time constituting, or intended to constitute, collateral security for any of the Financing Agreements, or for the value of any such collateral security or for the validity, enforceability, or collectability of any such amounts owing with respect to any of the Financing Agreements, or for any recitals or

statements, warranties or representations made herein or in any of the other Financing Agreements or in any certificate or instrument hereafter furnished to it by or on behalf of Credit Parties or any of their Subsidiaries, or be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or in any instrument at any time constituting, or intended to constitute, collateral security for any of the Financing Agreements or to inspect any of the properties, books or records of Credit Parties or any of their Subsidiaries. The Agents shall not be bound to ascertain whether any notice, consent, waiver or request delivered to them by Credit Parties shall have been duly authorized or is true, accurate and complete. The Agents have not made nor do they now make any representations or warranties, express or implied, nor does it assume any liability to the Lenders, with respect to the credit worthiness or financial conditions of Credit Parties or any of its Subsidiaries. Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender, and based upon such information and documents as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

(b) For purposes of determining compliance with the conditions set forth in Section 4, each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document and matter either sent, or made available, by the Agents to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be to be consent to or approved by or acceptable or satisfactory to such Lender, unless an officer of the applicable Administrative Agent active upon the Credit Parties' account shall have received notice from such Lender not less than one (1) Business Day prior to the date of the closing hereunder specifying such Lender's objection thereto and such objection shall not have been withdrawn by notice to such Administrative Agent to such effect on or prior to such date.

13.5 Payments.

(a) A payment by Credit Parties to an Administrative Agent hereunder or under any of the other Financing Agreements for the account of any Lender shall constitute a payment to such Lender. Each Administrative Agent agrees promptly to distribute to each Lender such Lender's Pro Rata Share of payments received by such Administrative Agent for the account of the applicable Lenders except as otherwise expressly provided herein or in any of the other Financing Agreements.

(b) If in the opinion of any Administrative Agent the distribution of any amount received by it in such capacity hereunder or under any of the other Financing Agreements might involve it in liability, it may refrain from making distribution until its right to make distribution shall have been adjudicated by a court of competent jurisdiction. If a court of competent jurisdiction shall adjudge that any amount received and distributed by such Administrative Agent is to be repaid, each Person to whom any such distribution shall have been made shall either repay to such Administrative Agent its proportionate share of the amount so adjudged to be repaid or shall pay over the same in such manner and to such Persons as shall be determined by such court.

(c) Notwithstanding anything to the contrary contained in this Agreement or any of the other Financing Agreements, any Revolving Lender that fails (i) to make available to

the Revolving Administrative Agent its pro rata share of any Loan or to purchase any participation in a Revolving Letter of Credit Accommodation, or (ii) to comply with the provisions of Section 10.2(i) with respect to making dispositions and arrangements with the other Revolving Lenders, where such Revolving Lender's share of any payment received, whether by setoff or otherwise, is in excess of its pro rata share of such payments due and payable to all of the Revolving Lenders, in each case as, when and to the full extent required by the provisions of this Agreement, shall be deemed delinquent (a "**Delinquent Revolving Lender**") and shall be deemed a Delinquent Revolving Lender until such time as such delinquency is satisfied. A Delinquent Revolving Lender shall be deemed to have assigned any and all payments due to it from Credit Parties, whether on account of outstanding Loans, interest, fees or otherwise, to the remaining non-delinquent Revolving Lenders for application to, and reduction of, their respective pro rata shares of all outstanding Loans and other Revolving Obligations. The Delinquent Revolving Lender hereby authorizes the Revolving Administrative Agent to distribute such payments to the non-delinquent Revolving Lenders in proportion to their respective pro rata shares of all outstanding Loans and other Revolving Obligations. A Delinquent Revolving Lender shall be deemed to have satisfied in full a delinquency when and if, as a result of application of the assigned payments to all outstanding Loans and other Revolving Obligations of the non-delinquent Revolving Lenders, the Revolving Lenders' respective pro rata shares of all outstanding Loans and other Revolving Obligations have returned to those in effect immediately prior to such delinquency and without giving effect to the nonpayment causing such delinquency.

(d) At the Credit Parties' request, the Revolving Administrative Agent or an Eligible Assignee reasonably acceptable to the Revolving Administrative Agent shall have the right (but not the obligation) to purchase from any Delinquent Revolving Lender, and each Delinquent Revolving Lender shall, upon such request, sell and assign to the Revolving Administrative Agent or such Eligible Assignee, all of the Delinquent Revolving Lender's outstanding Loans and participations in Revolving Letter of Credit Accommodations hereunder. Such sale shall be consummated promptly after the Revolving Administrative Agent has arranged for a purchase by the Revolving Administrative Agent or an Eligible Assignee pursuant to an Assignment and Acceptance, and at a price equal to the outstanding principal balance of the Delinquent Revolving Lender's Loans plus accrued interest and fees, without premium or discount.

13.6 Holders of Revolving Letter of Credit Accommodation Participations . The Revolving Administrative Agent may deem and treat the purchaser of any participation in Revolving Letter of Credit Accommodations as the absolute owner or purchaser thereof for all purposes hereof until it shall have been furnished in writing with a different name by such payee or by a subsequent holder, assignee or transferee.

13.7 Holders of LC Facility Letters of Credit Participations . The LC Facility Administrative Agent may deem and treat the purchaser of any Participation in LC Facility Letters of Credit as the absolute owner or purchaser thereof for all purposes hereof until it shall have been furnished in writing with a different name by such payee or by a subsequent holder, assignee or transferee.

13.8 Indemnity.

(a) The Revolving Lenders ratably agree hereby to indemnify and hold harmless Revolving Administrative Agent, Accounts Collateral Agent (prior to the Discharge of Revolving Obligations) and the Reference Bank from and against any and all claims, actions and suits (whether groundless or otherwise), losses, damages, costs, expenses (including any expenses for which any such Agent and/or the Reference Bank has not been reimbursed by the Credit Parties as required by Section 11.5), and liabilities of every nature and character arising out of or related to this Agreement or any of the other Financing Agreements or the transactions contemplated or evidenced hereby or thereby, or such Agent's or the Reference Bank's actions taken hereunder or thereunder, unless it is determined by a court of competent jurisdiction by a final and non-appealable judgment or court order binding such Agent or Reference Bank, as the case may be, that such loss was the result of acts or omissions of such Agent or the Reference Bank, as the case may be, constituting willful misconduct or gross negligence.

(b) The LC Facility Lenders ratably agree hereby to indemnify and hold harmless LC Facility Administrative Agent, the LC Facility Issuing Bank, Accounts Collateral Agent and the LC Facility Collateral Agent from and against any and all claims, actions and suits (whether groundless or otherwise), losses, damages, costs, expenses (including any expenses for which any such Agent has not been reimbursed by the US Credit Parties as required by Section 11.5), and liabilities of every nature and character arising out of or related to this Agreement or any of the other Financing Agreements or the transactions contemplated or evidenced hereby or thereby, or such Agent's actions taken hereunder or thereunder, unless it is determined by a court of competent jurisdiction by a final and non-appealable judgment or court order binding such Agent that such loss was the result of acts or omissions of such Agent or the Reference Bank constituting willful misconduct or gross negligence.

13.9 Agents as Lenders, Etc. In its individual capacity, each Agent shall have the same obligations and the same rights, powers and privileges in respect to the Loans or LC Facility Deposits made by it and as the purchaser of a participation in any Revolving Letter of Credit Accommodation or LC Facility Letter of Credit, as it would have were it not such an Agent. Each Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of banking, trust, financial advisory or other business with Parent or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Parent for services in connection with this Agreement and otherwise without having to account for the same to Lenders.

13.10 Resignation; Removal. Any Agent may resign at any time by giving sixty (60) days' prior written notice thereof to the Credit Parties, the Agents and the Lenders. Upon any such resignation of an Agent under the Revolving Facility, the Revolving Majority Lenders, in the case of the foregoing clause or, in the case of the resignation of any Agent under the LC Facility, the LC Facility Majority Lenders, as the case may be, shall have the right to appoint a successor Agent. Unless a Default or Event of Default shall have occurred and be continuing, such successor Agent shall be reasonably acceptable to the Credit Parties. If no successor Agent shall have been so appointed by the applicable Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent's giving of notice of resignation, then the retiring

Agent may, on behalf of the applicable Lenders, appoint a successor Agent, which shall be a financial institution having a rating of not less than A or its equivalent by Standard & Poor's Corporation. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, 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 hereunder. After any retiring Agent's resignation, the provisions of this Agreement and the other Financing Agreements shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

13.11 Notification of Defaults and Events of Default. No Agent shall be deemed to have notice of a Default or an Event of Default unless it is notified thereof by a Credit Party or a Lender with reference to this Agreement. Each Lender hereby agrees that, upon learning of the existence of a Default or Event of Default, it shall promptly notify each Administrative Agent thereof. Each Administrative Agent hereby agrees that upon receipt of any notice under this Section 13.11 it shall promptly notify the Lenders of the existence of such Default or Event of Default.

13.12 Duties in the Case of Enforcement. Each Lender agrees that, except as set forth in Section 10.2(l), no Lender shall have the right individually (i) to realize upon the security created under this Agreement or the other Financing Agreements, (ii) to enforce any provision of this Agreement or the other Financing Agreements or to exercise any remedy hereunder or thereunder, or (iii) to make demand under this Agreement or any other Financing Agreement. In case one or more Events of Default have occurred and shall be continuing, and whether or not acceleration of the Obligations shall have occurred, the Accounts Collateral Agent and LC Facility Collateral Agent shall, if (a) in the case of the Accounts Collateral Agent, such Agent is so requested by the Majority Revolving Lenders, or following the Discharge of Revolving Obligations, the Majority LC Facility Lenders and, in the case of the LC Facility Collateral Agent, the Majority LC Facility Lenders and (b) such Lenders have provided to the Accounts Collateral Agent or the LC Facility Collateral Agent, as the case may be, such additional indemnities and assurances against expenses and liabilities as the Accounts Collateral Agent and LC Facility Collateral Agent, respectively, may reasonably request, proceed to enforce the provisions hereof, the Financing Agreements authorizing the sale or other disposition of all or any part of the Accounts Collateral or Non-Accounts Collateral, respectively, and exercise all or any such other legal and equitable and other rights or remedies as it may have in respect of such Accounts Collateral or Non-Accounts Collateral. Such Majority Lenders may direct such Collateral Agent in writing as to the method and the extent of any Accounts Collateral or Non-Accounts Collateral or other disposition, the applicable Lenders hereby agreeing to indemnify and hold such Collateral Agent, harmless from all liabilities incurred in respect of all actions taken or omitted in accordance with such directions, *provided* that such Collateral Agent need not comply with any such direction to the extent that such Collateral Agent reasonably believes such Collateral Agent's compliance with such direction to be unlawful or commercially unreasonable in any applicable jurisdiction.

13.13 Field Audit and Examination Reports; Disclaimer by LC Facility Lenders. In the event that the Accounts Collateral Agent provides to Revolving Lenders copies of field audits or examination reports (each, a " **Report**" and collectively, "**Reports**"), in Accounts Collateral Agent's discretion, each Revolving Lender:

(a) expressly agrees and acknowledges that the LC Facility Collateral Agent (i) makes no representation or warranty as to the accuracy of any Report; or (ii) shall be liable for any information contained in any Report;

(b) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Accounts Collateral Agent or other party performing any audit or examination will inspect only specific information regarding the Credit Parties and will rely significantly upon each Credit Parties' books and records, as well as on representations of each Credit Party's personnel;

(c) agrees to keep all Reports confidential and strictly for its internal use, and not to distribute except to its participants, or use any Report in any other manner; and

(d) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Accounts Collateral Agent and any such other Revolving Lender preparing a Report harmless from any action the indemnifying Revolving Lender may take or conclusion the indemnifying Revolving Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Revolving Lender has made or may make to any of the Credit Parties, or the indemnifying Revolving Lender's participation in, or the indemnifying Revolving Lender's purchase of, a loan or loans of any of the Credit Parties; and (ii) to pay and protect, and indemnify, defend and hold the Accounts Collateral Agent and any such other Revolving Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses and other amounts (including attorney's fees and expenses) incurred by the Accounts Collateral Agent and any such other Revolving Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying LC Facility Lender.

13.14 Canadian Collateral Agent as *fondé de pouvoir*. Without prejudice to the provisions of this Agreement, each Canadian Secured Party hereby designates and appoints the Canadian Collateral Agent as the person holding the power of attorney (*fondé de pouvoir*) of the Canadian Secured Parties as contemplated under Article 2692 of the Civil Code of Quebec, to enter into, to take and to hold on their behalf, and for their benefit, the Deed of Hypothec, and to exercise such powers and duties which are conferred upon the Canadian Collateral Agent under the Deed of Hypothec. Any Person who becomes a Canadian Secured Party shall be deemed to have consented to and confirmed the Canadian Collateral Agent as the person holding the power of attorney (*fondé de pouvoi*r) as aforesaid and to have ratified, as of the date it becomes a Canadian Secured Party, all actions taken by the Canadian Collateral Agent in such capacity. As the person holding the power of attorney (*fondé de pouvoir*), the Canadian Collateral Agent shall be entitled to delegate from time to time any of its powers or duties under the Deed of Hypothec to any Person and on such terms and conditions as the Canadian Collateral Agent may determine from time to time.

Without prejudice to the designations and appointment of the Canadian Collateral Agent as the person holding the power of attorney (*fondé de pouvoir*) as aforesaid, each Canadian Secured Party hereby additionally designates and appoints the Canadian Collateral Agent as agent and custodian for and on behalf of each of them to hold and to be the sole registered holder

of any bond issued under the Deed of Hypothec, notwithstanding Section 32 of an Act respecting the special powers of legal persons (Quebec) or any other requirement of law. In this respect, (i) the Canadian Collateral Agent, as agent and custodian of the Canadian Secured Parties, shall keep a record indicating the names and addresses of, and the pro rata portion of the obligations and indebtedness secured by the Movable Hypothec, owing to the persons for and on behalf of whom the aforesaid bond is so held from time to time and (ii) each Canadian Secured Party will be entitled to the benefits of any Canadian Accounts Collateral subject to the Deed of Hypothec and will participate in the proceeds of realization of any such collateral, the whole in accordance with the terms hereof. The Canadian Collateral Agent, in such capacity as agent and custodian shall, (x) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Canadian Accounts Collateral Agent with respect to the Canadian Accounts Collateral under the Deed of Hypothec and Movable Hypothec, applicable law or otherwise, and (y) benefit from and be subject to all provisions hereof with respect to the Canadian Collateral Agent *mutatis mutandis*, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Canadian Secured Parties. Any Person who becomes a Canadian Secured Party shall be deemed to have consented to and confirmed the Canadian Collateral Agent as the agent and custodian as aforesaid and to have ratified, as of the date it becomes a Canadian Secured Party, all actions taken by the Canadian Collateral Agent in such capacity. As agent and custodian, the Canadian Collateral Agent shall be entitled to delegate from time to time any of its powers or duties hereunder to any Person and on such terms and conditions as the Canadian Collateral Agent may determine from time to time.

SECTION 14. JOINT AND SEVERAL LIABILITY; GUARANTEES.

14.1 (a) Joint and Several Liability of US Borrowers. All Loans made, LC Facility Letters of Credit and Revolving Letter of Credit Accommodations issued hereunder are made to or for the mutual benefit, directly and indirectly, of each of the US Borrowers and in consideration of the agreement of the other US Borrowers to accept joint and several liability for the Obligations and for the Canadian Borrowers to accept joint and several liability with respect to the Canadian Obligations. Each US Borrower jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several and direct and primary liability for the full and indefeasible payment when due and performance of all Obligations and for the prompt and full payment and performance of all of the promises, covenants, representations, and warranties made or undertaken by any Credit Party under the Financing Agreements and US Borrowers agree that such liability is independent of the duties, obligations, and liabilities of each of the joint and several US Borrowers. In furtherance of the foregoing, each US Borrower jointly and severally, absolutely and unconditionally guarantees to (a) the Revolving Secured Parties the full and indefeasible payment and performance when due of all Revolving Obligations and (b) LC Facility Secured Parties the full and indefeasible payment and performance when due of all LC Facility Obligations.

(b) Joint and Several Liability of Canadian Borrowers. All Canadian Loans made issued hereunder are made to or for the mutual benefit, directly and indirectly, of each of the Canadian Borrowers and in consideration of the agreement of the US Credit Parties and other Canadian Borrowers to accept joint and several liability for the Canadian Obligations. Each

Canadian Borrower jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several and direct and primary liability for the full and indefeasible payment when due and performance of all Canadian Obligations and for the prompt and full payment and performance of all of the promises, covenants, representations, and warranties made or undertaken by each Canadian Borrower under the Financing Agreements and Canadian Borrowers agree that such liability is independent of the duties, obligations, and liabilities of each of the joint and several Canadian Borrowers. In furtherance of the foregoing, each Canadian Borrower jointly and severally, absolutely and unconditionally guarantees to Canadian Secured Parties the full and indefeasible payment and performance when due of all Canadian Obligations.

14.2 Suretyship Waivers and Consents.

(a) Each US Credit Party acknowledges that the obligations of such US Credit Party undertaken herein might be construed to consist, at least in part, of the guarantee of obligations of persons other than such US Credit Party (including the other US Credit parties) and, in full recognition of that fact and in full recognition of the joint and several and direct and primary liability of each US Credit Party hereunder for the Obligations, each US Credit Party consents and agrees that (A) in the case of the US Revolving Obligations, the Revolving Administrative Agent and Revolving Lenders, (B) in the case of the Canadian Obligations, the Canadian Agent and the Canadian Lender and (C) in the case of LC Facility Obligations, the LC Facility Administrative Agent and LC Facility Lenders, may, at any time and from time to time, without notice or demand (except as provided in and in accordance with the terms of this Agreement), whether before or after any actual or purported termination, repudiation or revocation of this Agreement by any US Credit Party, and without affecting the enforceability or continuing effectiveness hereof as to each US Credit Party: (i) increase, extend, or otherwise change the time for payment or the terms of the Obligations or any part thereof; (ii) supplement, restate, modify, amend, increase, decrease, or waive, or enter into or give any agreement, approval or consent with respect to any of the Obligations or any part thereof, or any of the Financing Agreements or any additional security or guarantees, or any condition, covenant, default, remedy, right, representation, or term thereof or thereunder; (iii) accept new or additional instruments, documents, or agreements in exchange for or relative to any of the Financing Agreements or the Obligations or any part thereof; (iv) accept partial payments on any of the Obligations; (v) receive and hold additional security or guarantees for the Obligations or any part thereof; (vi) release, reconvey, terminate, waive, abandon, fail to perfect, subordinate, exchange, substitute, transfer, or enforce any security or guarantees, and apply any security and direct the order or manner of sale thereof as such Administrative Agent in its sole and absolute discretion may determine; (vii) release any person from any personal liability with respect to the Obligations or any part thereof; (viii) settle, release on terms satisfactory to such Administrative Agent or by operation of applicable laws or otherwise liquidate or enforce any Obligations and any security therefor or guaranty thereof, respectively, in any manner, consent to the transfer of any security and bid and purchase at any sale; or (ix) consent to the merger, change, or any other restructuring or termination of the corporate or partnership existence of any US Credit Party, and correspondingly restructure the Obligations, and any such merger, change, restructuring, or termination shall not affect the liability of any US Credit Party or the continuing effectiveness hereof, or the enforceability hereof with respect to all or any part of the Obligations.

(b) Any Secured Party may enforce its rights under this Agreement independently as to each Credit Party and independently of any other remedy or security. Any Secured Party at any time may have or hold in connection with the Obligations, and it shall not be necessary for any Secured Party to marshal assets in favor of any Credit Party or to proceed upon or against or exhaust any security or remedy before proceeding to enforce this Agreement. Each Credit Party expressly waives any right to require any Secured Party to marshal assets in favor of any Credit Party of the Obligations of such Credit Party or to proceed against any other US Credit Party, and agrees that Accounts Collateral Agent may proceed against US Credit Parties or any US Accounts Collateral in such order as Accounts Collateral Agent shall determine in its sole and absolute discretion.

(c) Any Secured Party may each file a separate action or actions against any Credit Party with respect to such Credit Party's Obligations, whether such action is brought or prosecuted with respect to any security or against any guarantor of such Credit Party, or whether any other person is joined in any such action or actions. Each Credit Party agrees that any of the Secured Parties and any Credit Party and any affiliate of any Credit Party may deal with each other in connection with the Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between any of them, in any manner whatsoever, all without in any way altering or affecting the continuing efficacy of this Agreement. Each Credit Party, as a joint and several Credit Party and guarantor hereunder with respect to such Credit Party's Obligations, expressly waives the benefit of any statute of limitations affecting its joint and several liability and guarantee hereunder (but not its primary liability) or the enforcement of the Obligations of such Credit Party or any rights of any Secured Party created or granted herein.

(d) Any Secured Party's rights hereunder shall be reinstated and revived, and the enforceability of this Agreement shall continue, with respect to any amount at any time paid on account of the Obligations of any Credit Party, which thereafter shall be required to be restored or returned by such Agent or Lender, all as though such amount had not been paid. The rights of the Secured Party created or granted herein and the enforceability of this Agreement at all times shall remain effective to cover the full amount of all Obligations of such Credit Party, even though such Obligations, including any part thereof or any other security or guaranty therefor, respectively, may be or hereafter may become invalid or otherwise unenforceable as against any Credit Party and whether or not any Credit Party shall have any personal liability with respect thereto.

(e) Each Credit Party expressly waives any and all defenses now or hereafter arising or asserted by reason of (i) any disability or other defense of any other Credit Party with respect to such Credit Party's Obligations; (ii) the unenforceability or invalidity of any security or guaranty for such Credit Party's Obligations or the lack of perfection or continuing perfection or failure of priority of any security for such Credit Party's Obligations; (iii) the cessation for any cause whatsoever of the liability of such Credit Party (other than by reason of the full payment and performance of all of such Credit Party's Obligations); (iv) any failure of any Secured Party to marshal assets in favor of any Credit Party; (v) any failure of any Secured Party to give notice to any Credit Party of sale or other disposition of Collateral of another Credit Party or any defect in any notice that may be given in connection with any such sale or disposition of Collateral of any Credit Party securing the Obligations of such Credit Party; (vi) any failure of any Secured

Party to comply with applicable law in connection with the sale or other disposition of any Collateral or other security of any Credit Party, for any Obligations of such Credit Party, including any failure of any Secured Party to conduct a commercially reasonable sale or other disposition of any Collateral or other security of any other Credit Party for any Obligations of such Credit Party; (vii) any act or omission of any Secured Party or others that directly or indirectly results in or aids the discharge or release of any other Credit Party or any Obligations of any other Credit Party or any security or guaranty therefor by operation of law or otherwise; (viii) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (ix) any failure of any Secured Party to file or enforce a claim in any bankruptcy or other proceeding with respect to any Credit Party; (x) the avoidance of any Lien or security interest in assets of any other Credit Party in favor of any Secured Party for any reason; or (xi) any action taken by any Secured Party that is authorized by this section or any other provision of any Financing Agreement. Until such time, if any, as all of the Obligations of any Credit Party have been indefeasibly paid and performed in full and no portion of any commitment of any Secured Party to such Credit Party under any Financing Agreement remains in effect (or in the case of the Canadian Borrowers, prior to the Discharge of Revolving Obligations), such Credit Parties' rights of subrogation, contribution, reimbursement, or indemnity against the other shall be fully and completely subordinated to the indefeasible repayment in full of such Credit Parties' Obligations, and each Credit Party expressly waives any right to enforce any remedy that it now has or hereafter may have against any other Person and waives the benefit of, or any right to participate in, any Collateral now or hereafter held by any Secured Party.

(f) To the fullest extent permitted by applicable law, each Credit Party expressly waives and agrees not to assert, any and all defenses in its favor based upon an election of remedies by any Secured Party which destroys, diminishes, or affects such Credit Party's subrogation rights against the other Credit Parties and/or (except as explicitly provided for herein) any rights to proceed against each other Credit Party, or any other party liable to any Secured Party, for reimbursement, contribution, indemnity, or otherwise.

(g) Each Credit Party warrants and agrees that each of the waivers and consents set forth herein are made after consultation with legal counsel and with full knowledge of their significance and consequences, with the understanding that events giving rise to any defense or right waived may diminish, destroy, or otherwise adversely affect rights which such Credit Party otherwise may have against the other Credit Parties or the Secured Parties, or others, or against the Collateral, and that, under the circumstances, the waivers and consents herein given are reasonable. If any of the waivers or consents herein are determined to be contrary to any applicable law or public policy, such waivers and consents shall be limited to the extent required in order to be enforceable under applicable law.

(h) Notwithstanding any provision herein to the contrary, the joint and several liability and guarantees of the Canadian Borrowers shall be limited to the maximum amount permitted under any laws to which a Canadian Borrower is subject.

14.3 Contribution Agreement. As an inducement to each Secured Party to enter into the Financing Agreements and to make the loans and extend credit to the Borrowers, each Borrower agrees to indemnify and hold the other harmless from and each shall have a continuing right of contribution against each other Borrower with respect to the portion of the Obligations which such Borrowers are jointly and severally liable for, if and to the extent that a Borrower makes or is caused to make disproportionate payments in excess of that Borrower's Proportionate Share of any of the Obligations. These indemnification and contribution obligations shall be unconditional and continuing obligations of the Credit Parties and shall not be waived, rescinded, modified, limited or terminated in any way whatsoever without the prior written consent of each Secured Party, in its sole discretion. For purposes hereof, the " **Proportionate Share**" of a Borrower shall mean the Adjusted Net Worth of such Borrower divided by the Adjusted Net Worth of all the Borrowers which are jointly and severally liable with such Borrower for such portion of the Obligations in the aggregate on the date of this Agreement (or, in the case of any Person that becomes a Borrower after the date of this Agreement, its Adjusted Net Worth on the date it becomes a Borrower).

14.4 General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Credit Party under Section 14 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 14, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Credit Party, any Credit Party or any other person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

14.5 PREJUDGMENT REMEDIES. EACH CREDIT PARTY HEREBY WAIVES SUCH RIGHTS AS IT MAY HAVE TO NOTICE AND/OR HEARING UNDER ANY APPLICABLE FEDERAL OR STATE LAWS INCLUDING, WITHOUT LIMITATION, CONNECTICUT GENERAL STATUTES SECTIONS 52-278A, ET SEQ., AS AMENDED, PERTAINING TO THE EXERCISE BY SECURED PARTIES OF SUCH RIGHTS AS SECURED PARTIES MAY HAVE INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK PREJUDGMENT REMEDIES AND/OR DEPRIVE ANY CREDIT PARTY OF OR AFFECT THE USE OF OR POSSESSION OR ENJOYMENT OF A CREDIT PARTY'S PROPERTY PRIOR TO THE RENDITION OF A FINAL JUDGMENT AGAINST A CREDIT PARTY. EACH CREDIT PARTY FURTHER WAIVES ANY RIGHT IT MAY HAVE TO REQUIRE ANY SECURED PARTY TO PROVIDE A BOND OR OTHER SECURITY AS A PRECONDITION TO OR IN CONNECTION WITH ANY PREJUDGMENT REMEDY SOUGHT BY ANY SECURED PARTY.

14.6 Guaranty.

(a) Each Guarantor hereby jointly and severally guarantees to each Secured Party as hereinafter provided the prompt payment of all Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization

or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal. Each Guarantor further agrees that its guarantee constitutes a guarantee of payment when due and not of collection. To the fullest extent permitted by applicable law, the obligations of each Guarantor hereunder shall not be affected by (a) the failure of any Administrative Agent or any other Secured Party to assert any claim or demand or to enforce or exercise any right or remedy against any Borrower under the provisions of this Agreement, any other Financing Agreement or otherwise, (b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement, any other Financing Agreement, any guarantee or any other agreement, including with respect to any other Borrower or Guarantor under this Agreement, or (c) the failure to perfect any security interest in or lien on, or the release of, any of the security held by or on behalf of any Collateral Agent or any other Secured Party.

(b) Each Guarantor hereby waives (i) any right to require that an action be brought against Borrower or any other person or to require that resort be made to the Collateral of any Borrower prior to enforcement of such Guarantor's guarantee hereunder; (ii) any defense that may be available to any other Credit Party with respect to any portion of the Obligations; (iii) any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise; and (iv) any right or claim of right to cause a marshalling of the assets of any Credit Party.

(c) Upon payment by any Guarantor of any sums to any Administrative Agent or any Secured Party pursuant to this Agreement and upon the satisfaction of all outstanding Obligations, such Guarantor shall be subrogated to the rights of each Administrative Agent or such Secured Party to the extent of such payment; *provided, however,* that all rights of such Guarantor against any Credit Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations. In addition, any Indebtedness of any Credit Party now or hereafter held by any Guarantor is hereby subordinated in right of payment to the prior payment in full in cash of the Obligations. If any amount shall erroneously be paid to any Guarantor on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such Indebtedness of any Credit Party, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the applicable Administrative Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement.

(d) As an inducement to each Secured Party to enter into the Financing Agreements and to make the loans and extend credit to the Borrowers, each Borrower and each Guarantor agrees to indemnify and hold each Guarantor harmless from and each Guarantor shall have a continuing right of contribution against each other Credit Party with respect to the portion

of the Obligations which such Credit Parties are jointly and severally liable for, if and to the extent that a Guarantor makes or is caused to make disproportionate payments in excess of that ‘s Proportionate Share of any of the Obligations. These indemnification and contribution obligations shall be unconditional and continuing obligations of the Credit Parties and shall not be waived, rescinded, modified, limited or terminated in any way whatsoever without the prior written consent of each Secured Party, in its sole discretion. For purposes hereof, the “ **Proportionate Share**” of a Gurantor shall mean the Adjusted Net Worth of such Guarantor divided by the Adjusted Net Worth of all the Credit Parties which are jointly and severally liable with such Guarantor for such portion of the Obligations in the aggregate on the date of this Agreement (or, in the case of any Person that becomes a Credit Party after the date of this Agreement, its Adjusted Net Worth on the date it becomes a Borrower).

SECTION 15. USA PATRIOT ACT NOTICE.

15.1 USA Patriot Act Notice. Each Lender that is subject to the Act and each Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “ **Act**”), it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of the Borrowers and other information that will allow such Lender or Agent, as applicable, to identify the Borrowers in accordance with the Act.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Lender and Credit Parties have caused these presents to be duly executed as of the day and year first above written.

CREDIT PARTIES

CLEAN HARBORS, INC.
ALTAIR DISPOSAL SERVICES, LLC
BATON ROUGE DISPOSAL, LLC
BRIDGEPORT DISPOSAL, LLC
CH INTERNATIONAL HOLDINGS, INC.
CLEAN HARBORS ANDOVER, LLC
CLEAN HARBORS ANTIOCH, LLC
CLEAN HARBORS ARAGONITE, LLC
CLEAN HARBORS ARIZONA, LLC
CLEAN HARBORS OF BALTIMORE, INC.
CLEAN HARBORS BATON ROUGE, LLC
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CLEAN HARBORS COLFAX, LLC
CLEAN HARBORS DEER PARK, L.P.
CLEAN HARBORS DEER TRAIL, LLC
CLEAN HARBORS DISPOSAL SERVICES, INC.
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CLEAN HARBORS KANSAS, LLC
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CLEAN HARBORS LONE STAR CORP.
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CLEAN HARBORS OF TEXAS, LLC
CLEAN HARBORS PECATONICA, LLC
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CLEAN HARBORS TENNESSEE, LLC
CLEAN HARBORS WESTMORLAND, LLC
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MURPHY'S WASTE OIL SERVICE INC.
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CH CANADA HOLDINGS CORP.
CH CANADA GP, INC.
CLEAN HARBORS CANADA, LP
CLEAN HARBORS CANADA, INC.
CLEAN HARBORS QUEBEC, INC.
CLEAN HARBORS MERCIER, INC.
510127 N.B. INC.

By: /S/ STEPHEN MOYNIHAN
Title: **SENIOR VICE PRESIDENT**

Chief Executive Office:
1501 Washington Street
Braintree, MA 02184

REVOLVING ADMINISTRATIVE AGENT, ACCOUNTS COLLATERAL AGENT AND US REVOLVING LENDER

FLEET CAPITAL CORPORATION,
Individually and as Agent

By: /S/ MARK SCHAFER
Title: VICE PRESIDENT

CANADIAN COLLATERAL AGENT AND CANADIAN LENDER:

FLEET CAPITAL GLOBAL FINANCE, INC.,
Individually and as Agent

By: /S/ MARK ADKINS
Title: VICE PRESIDENT

LC FACILITY ADMINISTRATIVE AGENT AND LC FACILITY COLLATERAL AGENT

CREDIT SUISSE FIRST BOSTON, acting through its Cayman Islands branch

By: /S/ JOSEPH ADIPIETRO
Title: DIRECTOR

By: /S/ CASSANDRA DROOGAN
Title: ASSOCIATE

LC FACILITY ISSUING BANK

CREDIT SUISSE FIRST BOSTON, acting through its New York branch

By: /S/ JOSEPH ADIPIETRO
Title: DIRECTOR

By: /S/ CASSANDRA DROOGAN
Title: ASSOCIATE

AS AN LC FACILITY LENDER

CREDIT SUISSE FIRST BOSTON, acting through its Cayman Islands branch

By: /S/ BILL O'DALY
Title: DIRECTOR

By: /S/ CASSANDRA DROOGAN
Title: ASSOCIATE

AS AN LC FACILITY LENDER

GOLDMAN SACHS CREDIT PARTNERS L.P.

By: /S/ W.W. ARCHER
Title: **MANAGING DIRECTOR**

Exhibit 4.28A

AMENDMENT NO. 1

AMENDMENT NO. 1 (this "**Amendment**"), dated as of July 20, 2004, to the Loan and Security Agreement, dated as of June 30, 2004 (the " **Loan Agreement**"; capitalized terms used herein and not defined herein shall have the meaning set forth in the Loan Agreement) by and among Credit Suisse First Boston, acting through its Cayman Islands branch (" **CSFB**"), as administrative agent for the LC Facility, Fleet Capital Corporation, a Rhode Island corporation, as administrative agent for the Revolving Facility and sole arranger and bookrunner for the Revolving Facility, Goldman Sachs Credit Partners L.P. ("**GSCP**"), as syndication agent for the LC Facility, Credit Suisse First Boston, acting through its Cayman Islands branch, as documentation agent for the LC Facility, CSFB and GSCP, as joint lead arrangers and bookrunners under the LC Facility, Clean Harbors, Inc., a Massachusetts corporation ("**Parent**"), the Canadian Borrowers, and each of the other Subsidiaries of Parent from time to time a party thereto (each such Subsidiary, together with Parent and Canadian Borrowers, a "**Credit Party**" and, collectively, "**Credit Parties**").

W I T N E S S E T H:

WHEREAS, subsection 11.3 of the Loan Agreement permits the Loan Agreement to be amended from time to time;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION ONE Amendments.

(a) Section 1.138 of the Loan Agreement shall be amended by changing the term "(2)" to "(d)" and the term "(d)" to the following: "(2) in exchange for".

(b) Section 2.6(k)(ii) of the Loan Agreement shall be amended by inserting, in the fifth sentence thereof, immediately after the term "(or", the following: ", following such cure or waiver,".

(c) Section 9.5 of the Loan Agreement shall be amended by replacing, in clause (i) of the fifth sentence thereof, the words "LC Facility Collateral" with the words "Non-Accounts Collateral,".

(d) Section 9.6(a) of the Loan Agreement shall be amended by (1) adding, in clause (i) thereof, after the term "fiscal month" appears, the following: "of the first two months of each fiscal quarter", (2) changing, in clause (ii) thereof, the words "fiscal quarter" (as first used in such clause) to "of the first three fiscal quarters of each fiscal year", (3)

changing, at the end of clause (ii) thereof, the words “for such fiscal quarter or fiscal year” to “as of the end of such fiscal quarter” and (4) changing, at the end of clause (iii) thereof, the words “for such fiscal quarter or fiscal year” to “as of the end of such fiscal year”.

(e) Section 9.7(b)(ii) of the Loan Agreement shall be amended by changing the words “(other than Rolling Stock)” to “(other than any item of Rolling Stock then having a book value in excess of $10,000)”.

(f) Section 9.8 of the Loan Agreement shall be amended by deleting, in clause (g) thereof, the words which appear following the first semicolon in such clause.

(g) Section 9.15 of the Loan Agreement shall be amended by replacing the word “complimentary” with the word “complementary”.

(h) Section 9.16 of the Loan Agreement shall be amended by (a) removing, in clause (v) thereof, the word “and” appearing immediately prior to the term “(iv)” and replacing such word with a comma and (b) inserting, immediately after the words “in existence on the date hereof” in clause (iv) thereof, the following: “and (vii) Liens permitted by Section 9.8,”.

(i) Section 9.20 of the Loan Agreement shall be amended by (a) replacing the word “Permit” with the word “permit” and (b) inserting, immediately prior to such word, the following: “Credit Parties shall not”.

(j) Section 9.32 of the Loan Agreement shall be amended by changing, in clause (c) thereof, the words “Financing Agreement” to “Financing Agreements”.

(k) Section 12.12 of the Loan Agreement shall be amended by changing in both clauses (a) and (b) of such Section the word “Agent” to “Agents” in each case where such word appears.

(l) Section 14.6 of the Loan Agreement shall be amended by adding, at the end thereof, the following: “(e) Notwithstanding any other provision of this Agreement to the contrary, the Guarantors are not and shall not be liable as borrowers or otherwise for repayment of any Obligations other than to the extent of the Guarantors’ obligations under the provisions of this Section 14.6 and/or any indemnity deeds of trust (or similar documents or instruments) executed in favor of either Collateral Agent by any Guarantor.”

SECTION TWO Conditions to Effectiveness. This Amendment shall become effective as of the date (the “ **Amendment No. 1 Effective Date** ”) when, and only when the Administrative Agents shall have received counterparts of this Amendment executed by each Credit Party, the Administrative Agents and a number of Lenders sufficient to constitute the Majority Lenders. The effectiveness of this Amendment (other than Sections Five, Six and

Seven hereof) is conditioned upon the accuracy of the representations and warranties set forth in Section Three hereof.

SECTION THREE Representations and Warranties. In order to induce the Lenders and the Administrative Agents to enter into this Amendment, Borrowers represent and warrant to each of the Lenders and the Administrative Agents that after giving effect to this Amendment, (a) no Default or Event of Default has occurred and is continuing; and (b) all of the representations and warranties in the Loan Agreement are true and complete in all material respects on and as of the date hereof as if made on the date hereof (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).

SECTION FOUR Reference to and Effect on the Loan Agreement. On and after the Amendment No. 1 Effective Date, each reference in the Loan Agreement to "this Agreement," "hereunder," "hereof" or words of like import referring the Loan Agreement, and each of the Financing Agreements to "the Loan Agreement," "thereunder," "thereof" or words of like import referring to the Loan Agreement, shall mean and be a reference to the Loan Agreement, as amended by this Amendment. The Loan Agreement and each other Financing Agreement, as specifically amended by this Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or any Agent under any of the Financing Agreements, nor constitute a waiver of any provision of any of the Financing Agreements.

SECTION FIVE Costs, Expenses and Taxes. Borrowers agree to pay all reasonable costs and expenses of the Administrative Agents in connection with the preparation, execution and delivery of this Amendment and the other instruments and documents to be delivered hereunder, if any, in accordance with the terms of the Loan Agreement.

SECTION SIX Execution in Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by telecopier shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION SEVEN Governing Law. **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO ANY PROVISIONS THEREOF RELATING TO CONFLICTS OF LAW).**

[Signature Pages Follow]

CREDIT PARTIES

CLEAN HARBORS, INC.
ALTAIR DISPOSAL SERVICES, LLC
BATON ROUGE DISPOSAL SERVICES, LLC
BRIDGEPORT DISPOSAL, LLC
CH INTERNATIONAL HOLDINGS, INC.
CLEAN HARBORS ANDOVER, LLC
CLEAN HARBORS ANTIOCH, LLC
CLEAN HARBORS ARAGONITE, LLC
CLEAN HARBORS ARIZONA, LLC
CLEAN HARBORS OF BALTIMORE, INC.
CLEAN HARBORS BATON ROUGE, LLC
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CLEAN HARBORS CHATTANOOGA, LLC
CLEAN HARBORS COFFEYVILLE, LLC
CLEAN HARBORS COLFAX, LLC
CLEAN HARBORS DEER PARK, L.P.
CLEAN HARBORS DEER TRAIL, LLC
CLEAN HARBORS DISPOSAL SERVICES, INC.
CLEAN HARBORS FINANCIAL SERVICES COMPANY
CLEAN HARBORS FLORIDA, LLC

By: /s/ STEPHEN MOYNIHAN
Title: SENIOR VICE PRESIDENT

CLEAN HARBORS GRASSY MOUNTAIN, LLC
CLEAN HARBORS KANSAS, LLC
CLEAN HARBORS LAPORTE, L.P.
CLEAN HARBORS LAUREL, LLC
CLEAN HARBORS LONE MOUNTAIN, LLC
CLEAN HARBORS LONE STAR CORP.
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DISPOSAL PROPERTIES, LLC
GSX DISPOSAL, LLC
HARBOR MANAGEMENT CONSULTANTS, INC.
HARBOR INDUSTRIAL SERVICES TEXAS, L.P.
HILLIARD DISPOSAL, LLC
NORTHEAST CASUALTY REAL PROPERTY, LLC
ROEBUCK DISPOSAL, LLC
SAWYER DISPOSAL SERVICES, LLC
SERVICE CHEMICAL, LLC

By: /s/ STEPHEN MOYNIHAN

Title: SENIOR VICE PRESIDENT

TULSA DISPOSAL, LLC
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC
CLEAN HARBORS OF BRAINTREE, INC.
CLEAN HARBORS OF NATICK, INC.
CLEAN HARBORS SERVICES, INC.
MURPHY'S WASTE OIL SERVICE INC.
CLEAN HARBORS KINGSTON FACILITY CORPORATION
CLEAN HARBORS OF CONNECTICUT, INC.
SPRING GROVE RESOURCE RECOVERY, INC.
CH CANADA HOLDINGS CORP.
CH CANADA GP, INC.
CLEAN HARBORS CANADA, LP
CLEAN HARBORS CANADA, INC.
CLEAN HARBORS QUEBEC, INC.
CLEAN HARBORS MERCIER, INC.
510127 N.B. INC.

By: /s/ STEPHEN MOYNIHAN

Title: SENIOR VICE PRESIDENT

REVOLVING ADMINISTRATIVE AGENT,
ACCOUNTS COLLATERAL AGENT AND
US REVOLVING LENDER

FLEET CAPITAL CORPORATION,
Individually and as Agent

By: /s/ MARK SCHAFER
Title: VICE PRESIDENT

LC FACILITY ADMINISTRATIVE AGENT
AND LC FACILITY COLLATERAL AGENT

CREDIT SUISSE FIRST BOSTON,
acting through its Cayman Islands branch

By: /s/ JOSEPH ADIPIETRO
Title: DIRECTOR

By: /s/ CASSANDRA DROOGAN
Title: ASSOCIATE

AS AN LC FACILITY LENDER

CREDIT SUISSE FIRST BOSTON,
acting through its Cayman Islands branch

By: /s/ JOSEPH ADIPIETRO
Title: DIRECTOR

By: /s/ CASSANDRA DROOGAN
Title: ASSOCIATE

AS AN LC FACILITY LENDER

GOLDMAN SACHS CREDIT PARTNERS L.P.

By: _____
Title: _____

Denali Capital LLC, managing member of DC Funding Partners, portfolio manager for DENALI CAPITAL CLO I, LTD., or an affiliate

By: /s/ CHARLES A STEARNS

Name: CHARLES A. STEARNS

Title: VICE PRESIDENT

Denali Capital LLC, managing member of DC Funding Partners, portfolio manager for DENALI CAPITAL CLO II, LTD., or an affiliate

By: /s/ CHARLES A STEARNS

Name: CHARLES A. STEARNS

Title: VICE PRESIDENT

LightPoint CLO-I Ltd.

By: /s/ THOMAS A. KRAMER

Name: THOMAS A. KRAMER

Title: SENIOR MANAGING DIRECTOR & CHIEF EXECUTIVE OFFICER

MW POST OPPORTUNITY OFFSHORE FUND, LLC
By: Post Advisory Group, LLC
As Authorized Agent

By: /s/ LAWRENCE A. POST

Name: LAWRENCE A. POST

Title: CHAIRMAN

MW POST PORTFOLIO FUND, LLC
By: Post Advisory Group, LLC
As Authorized Agent

By: /s/ LAWRENCE A. POST

Name: LAWRENCE A. POST

Title: CHAIRMAN

THE OPPORTUNITY FUND, LLC
By: Post Advisory Group, LLC
As Authorized Agent

By: /s/ LAWRENCE A. POST

Name: LAWRENCE A. POST

Title: CHAIRMAN

POST OPPORTUNITY FUND, LP
By: Post Advisory Group, LLC
As General Partner

By: /s/ LAWRENCE A. POST

Name: LAWRENCE A. POST

Title: CHAIRMAN

REGIMENT CAPITAL, LTD
By: Regiment Capital Management, LLC
as its Investment Advisor

By: Regiment Capital Advisors, LLC
its Manager and pursuant to delegated authority

By: /s/ MARK BROSTOWSKI

Name: MARK BROSTOWSKI

Title: VICE PRESIDENT

STATE OF SOUTH DAKOTA RETIREMENT SYSTEM FUND
By: Post Advisory Group, LLC
As Authorized Agent

By: /s/ LAWRENCE A. POST

Name: LAWRENCE A. POST

Title: CHAIRMAN

Exhibit 4.29

SECURITY AGREEMENT

among

CLEAN HARBORS, INC.,

VARIOUS SUBSIDIARIES
OF CLEAN HARBORS, INC.,

U.S. BANK NATIONAL ASSOCIATION,
as trustee for the Second Lien Note Creditors

and

CREDIT SUISSE FIRST BOSTON,
as Collateral Agent and LC Facility Administrative Agent

Dated as of June 30, 2004

TABLE OF CONTENTS

SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of June 30, 2004 (as the same may be amended, restated, modified and/or supplemented from time to time in accordance with the terms hereof, this "Agreement"), among each of the undersigned assignors (each, an " Assignor" and, together with each other entity which becomes a party hereto pursuant to Section 10.13, collectively, the "Assignors") in favor of Credit Suisse First Boston, acting through its Cayman Islands Branch, as collateral agent (together with any successor collateral agent, the " Collateral Agent") and as administrative agent under the LC Facility (as defined below) (the "LC Facility Administrative Agent"), for the benefit of the Secured Creditors (as defined below), and acknowledged and agreed to by U.S. Bank National Association, solely in its capacity as trustee under the Senior Second Lien Notes Indenture (as defined below) and not individually (together with any successor trustee, the "Senior Second Lien Notes Indenture Trustee") for the Senior Second Lien Noteholders (as defined below). Except as otherwise defined in Article IX hereof, capitalized terms used herein and defined in the Credit Agreement (as defined below) shall be used herein as therein defined.

W I T N E S S E T H :

WHEREAS, Clean Harbors, Inc. ("Parent"), the other Assignors, the LC Facility Administrative Agent, Fleet Capital Corporation, as administrative agent under and sole arranger for the Revolving Facility, Goldman Sachs Credit Partners L.P., as syndication agent under the LC Facility, Credit Suisse First Boston, acting through it Cayman Islands branch, as Documentation Agent under the LC Facility and Credit Suisse First Boston and Goldman Sachs Credit Partners L.P., as joint lead arrangers and joint lead bookrunners under the LC Facility, have entered into a Loan and Security Agreement, dated as of June 30, 2004 (the "Credit Agreement" as the same may from time to time be amended, modified, extended, renewed, replaced, restated, supplemented and/or refinanced from time to time, and includes any agreement extending the maturity of, or refinancing or restructuring (including, but not limited to, the inclusion of additional borrowers or guarantors thereunder or any increase in the amount borrowed thereunder), of all or any portion of the First Lien Obligations under such agreement or any successor agreement, whether or not with the same agent, trustee, representative, banks or holders), including a subfacility, providing for the issuance of, and participation in, LC Facility Letters of Credit for the account of the Borrower, all as contemplated therein (as used herein, the term "LC Facility" means the subfacility under the Credit Agreement providing for the issuance of, and participation in, LC Facility Letters of Credit as described in the Credit Agreement);

WHEREAS, Parent, as issuer, and the other Assignors, as guarantors (the " Subsidiary Guarantors"), have entered into an Indenture, dated as of June 30, 2004 (as the same may be amended, restated, modified and/or supplemented from time to time in accordance with the terms thereof and the Credit Agreement, the "Senior Second Lien Notes Indenture") with the Senior Second Lien Notes Indenture Trustee, providing for the issuance by the Borrower of its 11-1/4% Senior Second Lien Notes due 2012 in the aggregate principal amount of $150.0 million (the " Senior Second Lien Notes"; and the holders from time to time of the Senior Second Lien Notes are referred to herein as the " Senior Second Lien Noteholders");

WHEREAS, as provided in the Senior Second Lien Notes Indenture, the Subsidiary Guarantors have jointly and severally guaranteed the payment and performance when due of all obligations and liabilities of Parent under or with respect to the Senior Second Lien Notes and the Senior Second Lien Notes Indenture;

WHEREAS, it is a condition precedent to the issuance of, and participation in, LC Facility Letters of Credit under the Credit Agreement that each Assignor shall have executed and delivered to the Collateral Agent this Agreement;

WHEREAS, it is a condition precedent to the issuance of the Senior Second Lien Notes by the Parent under the Senior Second Lien Notes Indenture that each Assignor shall have executed and delivered to the Collateral Agent this Agreement; and

WHEREAS, each Assignor desires to execute this Agreement to satisfy the conditions precedent described in the two preceding recitals;

WHEREAS, each Assignor hereby authorizes and directs the Senior Second Lien Notes Indenture Trustee to enter into this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the other benefits accruing to each Assignor, the receipt and sufficiency of which are hereby acknowledged, (i) each Assignor hereby makes the following representations and warranties to the Collateral Agent for the benefit of the Secured Creditors, and (ii) each Assignor hereby covenants and agrees with the Collateral Agent for the benefit of the Secured Creditors as follows:

ARTICLE I

SECURITY INTERESTS

1.1 Grant of Security Interests. (a) As security for the prompt and complete payment and performance when due of all of its Obligations, each Assignor does hereby (A) subject to clause (e) of this Section 1.1, assign and transfer unto the Collateral Agent for the benefit of the Bank Creditors, and does hereby pledge and grant to the Collateral Agent for the benefit of the Bank Creditors, a continuing security interest in, all of the right, title and interest of such Assignor in, to and under all of the following personal property and fixtures (and all rights therein) of such Assignor, or in which or to which such Assignor has any rights, in each case, whether now existing or hereafter from time to time acquired, and (B) subject to clauses (d) and (e) of this Section 1.1, separately assign and transfer unto the Collateral Agent for the benefit of the Senior Second Lien Notes Creditors, and does hereby separately pledge and grant to the Collateral Agent for the benefit of the Senior Second Lien Notes Creditors, a separate continuing security interest in all of the right, title and interest of such Assignor in, to and under all personal property and fixtures (and all rights therein) of such Assignor, or in which or to which such Assignor has any rights, in each case, whether now existing or hereafter from time to time acquired, including without limitation, the following:

(i) the Securities Collateral;

(ii) all Contracts, together with all Contract Rights arising thereunder;

(iii) all Inventory;

(iv) the Cash Collateral Account and any other cash collateral account established for such Assignor for the benefit of the Secured Creditors and all moneys, securities and Instruments deposited or required to be deposited in such Cash Collateral Account;

(v) all Equipment;

(vi) all Marks, together with the registrations and right to all renewals thereof, and the goodwill of the business of such Assignor symbolized by the Marks;

(vii) all Patents and Copyrights and all reissues, renewals and extensions thereof;

(viii) all computer programs of such Assignor and all intellectual property rights therein and all other proprietary information of such Assignor, including, but not limited to, Trade Secrets and Trade Secret Rights;

(ix) all rights under insurance policies;

(x) all other Goods, General Intangibles, Chattel Paper (including, without limitation, all Tangible Chattel Paper and all Electronic Chattel Paper), Documents and Instruments of such Assignor;

(xi) all Permits;

(xii) all cash;

(xiii) all Commercial Tort Claims;

(xiv) all Deposit Accounts maintained by such Assignor with any Person, together with all monies, securities, Instruments and other investments deposited or required to be deposited in any of the foregoing;

(xv) all Investment Property;

(xvi) all Letter-of-Credit Rights (whether or not the respective letter of credit is evidenced by a writing);

(xvii) all Software and all Software licensing rights, all writings, plans, specifications and schematics, all engineering drawings, customer lists, goodwill and licenses, and all recorded data of any kind or nature, regardless of the medium of recording;

(xviii) all Supporting Obligations;

(xix) all Proceeds and products of any and all of the foregoing (all of the above, including this clause (xix), collectively, the " Collateral").

(b) Notwithstanding anything to the contrary contained in this Section 1.1 or elsewhere in this Agreement, each Assignor, the Collateral Agent, the LC Facility Administrative Agent (on behalf of the Bank Creditors) and the Senior Second Lien Notes Indenture Trustee (on behalf of the Senior Second Lien Notes Creditors) acknowledge and agree that (w) the security interest granted pursuant to this Agreement (including pursuant to this Section 1.1) to the Collateral Agent (i) for the benefit of the Bank Creditors, shall be a "first" priority senior security interest in the Collateral and (ii) for the benefit of the Senior Second Lien Notes Creditors, shall be a "second" priority security interest in the Collateral fully junior, subordinated and subject to the security interest granted to the Collateral Agent for the benefit of the Bank Creditors on the terms and conditions set forth in this Agreement, in the other Security Documents and in the Senior Second Lien Notes Documents and all other rights and benefits afforded hereunder to the Senior Second Lien Notes Creditors are expressly subject to the terms and conditions of this Agreement, the other Security Documents and the Senior Second Lien Notes Documents, (x) the Senior Second Lien Notes Creditors' security interests in the Collateral constitute security interests separate and apart (and of a different class and claim) from the Bank Creditors' security interests in the Collateral, (y) the grants of security interest hereunder constitute two separate and distinct grants of security, one in favor of the Collateral Agent for the benefit of the Bank Creditors, the second in favor of the Collateral Agent for the benefit of the Senior Second Lien Notes Creditors, and (z) in the event of any conflict between the provisions of this Agreement or any other Security Document and the provisions of the Senior Second Lien Notes Documents, the terms of this Agreement and the other Security Documents shall prevail.

(c) The security interest of the Collateral Agent under this Agreement extends to all Collateral of the kind which is the subject of this Agreement which any Assignor may acquire at any time during the continuation of this Agreement.

(d) Notwithstanding anything to the contrary contained in this Agreement, the Senior Second Lien Notes Creditors shall not have a security interest in, and the grant of security interests pursuant to this Section 1.1 for the benefit of the Senior Second Lien Notes Creditors shall not extend to, any Second Lien Excluded Collateral.

(e) Notwithstanding anything to the contrary contained in this Agreement, the Excluded Collateral shall not constitute Collateral as defined herein.

1.2 Power of Attorney. Each Assignor hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power after the occurrence of and during the continuance of an Event of Default (in the name of such Assignor or otherwise) to act, require, demand, receive, compound and give acquittance for any and all monies and claims for monies due or to become due to such Assignor under or arising out of the Collateral, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Collateral Agent may deem to be necessary or advisable to accomplish the purposes of this Agreement, which appointment as attorney is coupled with an interest.

ARTICLE II

GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Assignor represents, warrants and covenants to the Collateral Agent for the benefit of the Secured Creditors, which representations, warranties and covenants shall survive execution and delivery of this Agreement, as follows:

2.1 Necessary Filings. All filings, registrations and recordings necessary or appropriate to create, preserve, protect and perfect the security interest granted by such Assignor to the Collateral Agent for the benefit of the Secured Creditors hereby in respect of the Collateral have been accomplished on the date hereof or shall be accomplished within 10 days of the date hereof (or, in the case of property acquired after the date hereof, within 10 days after the acquisition thereof), and the security interest granted to the Collateral Agent pursuant to this Agreement in and to all the Collateral constitutes or will constitute, upon satisfaction of such filings, registrations and recordings, a perfected security interest therein superior and prior to the rights of all other Persons therein (other than any such rights pursuant to Permitted Liens) and subject to no other Liens (other than Permitted Liens) and is entitled to all the rights, priorities and benefits afforded by the Uniform Commercial Code or other relevant law as enacted in any relevant jurisdiction to perfected security interests, in each case to the extent that the Collateral consists of the type of property in which a security interest may be perfected by possession or control (within the meaning of the Uniform Commercial Code as in effect on the date hereof in the State of New York), by filing a financing statement under the Uniform Commercial Code as enacted in any relevant jurisdiction or by filing of a Grant of Security Interest in the respective form attached hereto in the United States Patent and Trademark Office or in the United States Copyright Office.

2.2 No Liens. Such Assignor is, and as to all Collateral acquired by it from time to time after the date hereof such Assignor will be, the owner of all Collateral free from any Lien, security interest, encumbrance or other right, title or interest of any other Person (other than Permitted Liens), and such Assignor shall defend the Collateral against all claims and demands of all Persons at any time claiming the same or any interest therein (other than in connection with Permitted Liens) adverse to the Collateral Agent.

2.3 Other Financing Statements. As of the date hereof, there is no financing statement (or similar statement or instrument of registration under the law of any jurisdiction) evidencing a valid security interest against any Assignor covering or purporting to cover any interest of any kind in the Collateral (other than as may be filed in connection with Permitted Liens), and at all times prior to the Termination Date, such Assignor will not execute or authorize to be filed in any public office any financing statement (or similar statement or instrument of registration under the law of any jurisdiction) or statements relating to the Collateral, except financing statements filed or to be filed in respect of and covering the security interests granted hereby by such Assignor or in connection with Permitted Liens.

2.4 Chief Executive Office; Records. As of the date hereof, the chief executive office of such Assignor is located at the address or addresses indicated on Schedule 2(a) to

the Perfection Certificate. The originals of all documents evidencing all Contract Rights and Trade Secret Rights of such Assignor and the only original books of account and records of such Assignor relating thereto are, and will continue to be, kept at such chief executive office, such other locations indicated on Schedule 2 to the Perfection Certificate or at such new locations as such Assignor may establish.

2.5 Location of Inventory and Equipment. All Inventory and Equipment held on the date hereof by each Assignor is located at one of the locations shown on Schedule 2 to the Perfection Certificate or in transit to any such location.

2.6 Legal Names; Type of Organization (and Whether a Registered Organization and/or a Transmitting Utility); Jurisdiction of Organization; Location; Organizational Identification Numbers; Changes Thereto; etc. The exact legal name of each Assignor, the type of organization of such Assignor, whether or not such Assignor is a Registered Organization, the jurisdiction of organization of such Assignor, such Assignor's Location and the organizational identification number (if any) of such Assignor are listed on Schedule 1(a) to the Perfection Certificate. Such Assignor shall not change its legal name, its type of organization, its status as a Registered Organization (in the case of a Registered Organization), its jurisdiction of organization, its Location, or its organizational identification number (if any) from that set forth on Schedule 1(a) to the Perfection Certificate for such Assignor, except that any such changes shall be permitted (so long as not in violation of the applicable requirements of the Secured Debt Agreements and so long as same do not involve (x) a Registered Organization ceasing to constitute same or (y) such Assignor changing its jurisdiction of organization or Location from the United States or a State thereof (including Washington D.C.) to a jurisdiction of organization or Location, as the case may be, outside the United States or a State thereof) if (i) it shall have given to the Collateral Agent not less than 15 days' prior written notice (or such shorter notice as may be consented to by the Collateral Agent) of each change to the information listed on Schedule 1(a) to the Perfection Certificate (as adjusted for any subsequent changes thereto previously made in accordance with this sentence), together with a supplement to Schedule 1(a) to the Perfection Certificate which shall correct all information contained therein for such Assignor, (ii) in connection with such respective change or changes, it shall have taken all action satisfactory to the Collateral Agent to maintain the security interests of the Collateral Agent in the Collateral intended to be granted hereby at all times fully perfected and in full force and effect, (iii) at the reasonable request of the Collateral Agent, it shall have furnished an opinion of counsel reasonably acceptable to the Collateral Agent to the effect that all financing or continuation statements and amendments or supplements thereto have been filed in the appropriate filing office or offices, and (iv) the Collateral Agent shall have received evidence that all other actions (including, without limitation, the payment of all filing fees and taxes, if any, payable in connection with such filings) have been taken in order to perfect (and maintain the perfection and priority of) the security interest granted hereby. In addition, to the extent that such Assignor does not have an organizational identification number on the date hereof (or, if later, on the date that it becomes an Assignor hereunder) and later obtains one, such Assignor shall promptly after becoming aware such number has been issued notify the Collateral Agent of such organizational identification number and shall take all actions reasonably satisfactory to the Collateral Agent to the extent necessary to maintain the security interest of the Collateral Agent in the Collateral intended to be granted hereby at all times fully perfected and in full force and effect.

2.7 Trade Names, etc. Such Assignor does not have or operate in any jurisdiction and in the preceding five years has not had and has not operated in any jurisdiction under, any trade names, fictitious names or other names except its legal name as specified in Schedule 1(a) to the Perfection Certificate and such other trade or fictitious names as are listed on Schedules 1(b) and 1(c) to the Perfection Certificate for such Assignor.

2.8 Certain Significant Transactions. During the one year period preceding the date of this Agreement (or, in the case of any Assignor that becomes a party hereto after the date of this Agreement, during the one year period preceding the date that it became a party hereto), no Person shall have merged or consolidated with or into any Assignor, and no Person shall have liquidated into, or transferred all or substantially all of its assets to, any Assignor, in each case except as described in Schedule 4 to the Perfection Certificate. With respect to any transactions so described in Schedule 4 to the Perfection Certificate, the respective Assignor shall have furnished such information with respect to the Person (and the assets of the Person and locations thereof) which merged with or into or consolidated with such Assignor, or was liquidated into or transferred all or substantially all of its assets to such Assignor, and shall have furnished to the Collateral Agent such UCC lien searches as may have been requested with respect to such Person and its assets to establish that no security interest (excluding Permitted Liens) continues perfected on the date hereof with respect to any Person described above (or the assets transferred to the respective Assignor by such Person), including without limitation pursuant to Section 9-316(a)(3) of the Uniform Commercial Code.

2.9 Non-UCC Property. The aggregate fair market value (as determined by the Borrower in good faith) of all property other than Rolling Stock of the Assignors of the types described in clauses (1), (2) and (3) of Section 9-311(a) of the Uniform Commercial Code does not exceed $1.0 million. If the aggregate value of all such property at any time owned by all Assignors exceeds $1.0 million, the Borrower shall provide prompt written notice thereof to the Collateral Agent and, upon the request of the Collateral Agent, the Assignors shall promptly (and in any event within 30 days) take such actions (at their own cost and expense) as may be required under the respective United States, State or other laws referenced in Section 9-311(a) of the Uniform Commercial Code to perfect the security interests granted herein in any Collateral where the filing of a financing statement does not perfect the security interest in such property in accordance with the provisions of Section 9-311(a) of the Uniform Commercial Code.

2.10 As-Extracted Collateral; Timber-to-Be-Cut. On the date hereof, such Assignor does not own, or expect to acquire, any property which constitutes, or would constitute, As-Extracted Collateral or Timber-to-Be-Cut. If at any time after the date of this Agreement such Assignor owns, acquires or obtains rights to any As-Extracted Collateral or Timber-to-Be-Cut, such Assignor shall furnish the Collateral Agent with prompt written notice thereof (which notice shall describe in reasonable detail the As-Extracted Collateral and/or Timber-to-Be-Cut and the locations thereof) and shall take all actions as may be deemed reasonably necessary or desirable by the Collateral Agent to perfect the security interest of the Collateral Agent therein.

2.11 Collateral in the Possession of a Bailee. If any Inventory or other Goods of any Assignor with a fair market value in excess of $100,000 are at any time in the possession of a bailee, such Assignor shall promptly notify the Collateral Agent thereof and, if requested by

the Collateral Agent, shall use its reasonable best efforts to promptly obtain an acknowledgment from such bailee, in form and substance reasonably satisfactory to the Collateral Agent, that the bailee holds such Collateral for the benefit of the Collateral Agent and shall act upon the instructions of the Collateral Agent, without the further consent of such Assignor. The Collateral Agent agrees with such Assignor that the Collateral Agent shall not give any such instructions unless an Event of Default has occurred and is continuing.

2.12 Recourse. This Agreement is made with full recourse to each Assignor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of such Assignor contained herein, in the other Secured Debt Agreements and otherwise in writing in connection herewith or therewith.

ARTICLE III

SPECIAL PROVISIONS CONCERNING INSTRUMENTS, CONTRACTS, SECURITIES COLLATERAL AND ROLLING STOCK

3.1 Instruments. If any Assignor owns or acquires any Instrument constituting Collateral (other than checks and other payment instruments received and collected in the ordinary course of business), such Assignor will within 20 Business Days thereafter notify the Collateral Agent thereof and, upon request by the Collateral Agent, promptly deliver such Instrument to the Collateral Agent appropriately endorsed to the order of the Collateral Agent as further security hereunder; provided that delivery and endorsement to the order of the Collateral Agent of Instruments, the principal amount of which, when added to the aggregate principal amount of all other Instruments owned or acquired by the Assignors but not delivered or endorsed to the order of the Collateral Agent, does not exceed $1,000,000 in the aggregate, shall not be required.

3.2 Assignors Remain Liable Under Contracts. Anything herein to the contrary notwithstanding, the Assignors shall remain liable under each Contract to observe and perform all of the conditions and obligations to be observed and performed by them thereunder, all in accordance with the terms of such Contract. Neither the Collateral Agent nor any other Secured Creditor shall have any obligation or liability under any Contract by reason of or arising out of this Agreement or the receipt by the Collateral Agent or any other Secured Creditor of any payment relating to such Contract pursuant hereto, nor shall the Collateral Agent or any other Secured Creditor be obligated in any manner to perform any of the obligations of any Assignor under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

3.3 Deposit Accounts, Securities Accounts, etc. (a) Assignors do not have any Deposit Accounts constituting Collateral as of the date hereof except for Deposit Accounts set forth in the Perfection Certificate with respect to which the Collateral Agent has a perfected security interest and Excluded Accounts. Assignors shall not, directly or indirectly, after the date hereof open, establish or maintain any Deposit Account constituting Collateral or permit any

Deposit Account constituting Collateral which is an Excluded Account to cease to meet the requirements set forth in the definition thereof unless each of the following conditions is satisfied: (i) in the case of any new Deposit Account, the Collateral Agent shall have received not less than five (5) Business Days' prior written notice of the intention of any Assignor to open or establish such Deposit Account which notice shall specify in reasonable detail and specificity acceptable to the Collateral Agent the name of the Deposit Account, the owner of the Deposit Account, the name and address of the bank or other financial institution at which such Deposit Account is to be opened or established, the individual at such bank or other financial institution with whom such Assignor is dealing and the purpose of the account, (ii) the bank or other financial institution where such account is opened or maintained shall be acceptable to the Collateral Agent, and (iii) on or before the opening of such Deposit Account (or, in the case of any Deposit Account which ceases to be an Excluded Account, within 10 Business Days of such Deposit Account ceasing to be an Excluded Account), such Assignor shall deliver to the Collateral Agent a Deposit Account Control Agreement with respect to such Deposit Account duly authorized, executed and delivered by such Assignor and the bank at which such Deposit Account is maintained.

(b) Assignors do not own or hold, directly or indirectly, beneficially or as record owner or both, any Investment Property, as of the date hereof, or have any Securities Account, Commodity Account or other similar account with any bank or other financial institution or other Securities Intermediary or Commodity Intermediary as of the date hereof, in each case except Securities Accounts and Commodity Accounts set forth in Schedule 16 to the Perfection Certificate with respect to which the Collateral Agent has a perfected security interest through an Investment Property Control Agreement. Assignors shall not, directly or indirectly, after the date hereof open, establish or maintain any Securities Account or Commodity Account constituting Collateral with any Securities Intermediary or Commodity Intermediary unless each of the following conditions is satisfied: (A) the Collateral Agent shall have received not less than five (5) Business Days' prior written notice of the intention of an Assignor to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to each Collateral Agent the name of the account, the owner of the account, the name and address of the Securities Intermediary or Commodity Intermediary at which such account is to be opened or established, the individual at such intermediary with whom such an Assignor is dealing and the purpose of the account, (B) the Securities Intermediary or Commodity Intermediary (as the case may be) where such account is opened or maintained shall be acceptable to the applicable Collateral Agent, and (C) on or before the opening of such Securities Account or Commodity Account, such an Assignor shall execute and deliver, and cause to be executed and delivered to the applicable Collateral Agent, an Investment Property Control Agreement with respect thereto duly authorized, executed and delivered by such an Assignor and such Securities Intermediary or Commodity Intermediary.

(c) In the event that any Assignor shall be entitled to or shall at any time after the date hereof hold or acquire any certificated securities constituting Collateral, such Assignor shall promptly endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time specify. If any securities constituting Collateral, now or hereafter acquired by any Assignor are uncertificated and are issued to such Assignor or its nominee directly by the issuer thereof, such Assignor shall immediately notify the Collateral Agent thereof and shall, as

the Collateral Agent may specify, either (A) cause the issuer to agree to comply with instructions from such Collateral Agent as to such securities, without further consent of such Assignor or such nominee, or (B) arrange for such Collateral Agent to become the registered owner of the securities.

3.4 Letter-of-Credit Rights. If any Assignor is at any time a beneficiary under a letter of credit constituting Collateral with a stated amount of $1,000,000 or more, such Assignor shall promptly notify the Collateral Agent thereof and, at the request of the Collateral Agent, such Assignor shall, pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, use its reasonable best efforts to (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Collateral Agent of the proceeds of any drawing under such letter of credit or (ii) arrange for the Collateral Agent to become the transferee beneficiary of such letter of credit, with the Collateral Agent agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied as provided in this Agreement after the occurrence and during the continuance of an Event of Default.

3.5 Commercial Tort Claims. All Commercial Tort Claims of each Assignor and any events or circumstances that would reasonably be expected to give rise to any Commercial Tort Claims of each Assignor as of the date of this Agreement are described in Schedule 15 to the Perfection Certificate. If any Assignor shall at any time and from time to time after the date hereof acquire any Commercial Tort Claims constituting Collateral in an amount (taking the greater of the aggregate claimed damages thereunder or the reasonably estimated value thereof) of $1,000,000 or more, such Assignor shall (i) promptly notify the Collateral Agent thereof in a writing signed by such Assignor and describing the details thereof and shall grant to the Collateral Agent in such writing a security interest in all such Commercial Tort Claims and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Collateral Agent, and (ii) perform all actions reasonably requested by the Collateral Agent to perfect such security interest in such Commercial Tort Claims. For its part, the Collateral Agent acknowledges and agrees that the proceeds of any Commercial Tort Claim will be applied as provided in this Agreement only after the occurrence and during the continuance of an Event of Default and prior thereto will be promptly paid to the respective Assignor.

3.6 Chattel Paper. Upon the request of the Collateral Agent made at any time or from time to time, each Assignor shall promptly furnish to the Collateral Agent a list of all Electronic Chattel Paper constituting Collateral held or owned by such Assignor. Furthermore, if requested by the Collateral Agent, each Assignor shall promptly take all actions which are reasonably practicable so that the Collateral Agent has "control" of all Electronic Chattel Paper constituting Collateral in accordance with the requirements of Section 9-105 of the Uniform Commercial Code. Each Assignor will promptly (and in any event within 20 days) following any request by the Collateral Agent, deliver all of its Tangible Chattel Paper constituting Collateral to the Collateral Agent; provided that delivery to the Collateral Agent of Tangible Chattel Paper constituting Collateral, the principal amount of which, when added to the aggregate principal amount of all other Tangible Chattel Paper constituting Collateral owned or acquired by the Assignors but not delivered to the Collateral Agent, does not exceed $1,000,000 in the aggregate, shall not be required.

3.7 Rolling Stock. Each Assignor shall cause all Rolling Stock, now owned or hereafter acquired by any Assignor, which, under applicable law, is required to be registered, to be properly registered (including, without limitation, the payment of all necessary taxes and receipt of any applicable permits) in the name of such Assignor and cause all Rolling Stock, now owned or hereafter acquired by any Assignor, the ownership of which, under applicable law (including, without limitation, any Motor Vehicle Law), is evidenced by a certificate of title or ownership, to be properly titled in the name of such Assignor, and in the case of any individual Rolling Stock of an Assignor with a fair market value in excess of $10,000, the Liens of the Collateral Agent shall be noted thereon.

3.8 Securities Collateral.

(a) So long as no Event of Default shall have occurred and be continuing:

(i) Each Assignor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes hereof, this Agreement or any other Secured Debt Agreement; provided, however, that no Assignor shall in any event exercise such rights in any manner which could violate this Agreement.

(ii) Each Assignor shall be entitled to receive and retain, and to utilize free and clear of the Liens hereof, any and all Distributions, but only if and to the extent made in accordance with the provisions of this Agreement; provided, however, that any and all such Distributions consisting of rights or interests in the form of securities shall be forthwith delivered to the Collateral Agent to hold as Collateral and shall, if received by any Assignor, be received in trust for the benefit of the Collateral Agent, be segregated from the other property or funds of such Assignor and be forthwith delivered to the Collateral Agent as Collateral in the same form as so received (with any necessary endorsement).

(iii) The Collateral Agent shall be deemed without further action or formality to have granted to each Assignor all necessary consents relating to voting rights and shall, if necessary, upon written request of any Assignor and at the sole cost and expense of the Assignors, from time to time execute and deliver (or cause to be executed and delivered) to such Assignor all such instruments as such Assignor may reasonably request in order to permit such Assignor to exercise the voting and other rights which it is entitled to exercise pursuant to Section 3.8(a)(i) and to receive the Distributions which it is authorized to receive and retain pursuant to Section 3.8(a)(ii).

(b) Upon the occurrence and during the continuance of any Event of Default:

(i) All rights of each Assignor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 3.8(a)(i) shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights.

(ii) All rights of each Assignor to receive Distributions which it would otherwise be authorized to receive and retain pursuant to Section 3.8(a)(ii) shall cease and all

such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to receive and hold as Collateral such Distributions.

(iii) Each Assignor shall, at its sole cost and expense, from time to time execute and deliver to the Collateral Agent appropriate instruments as the Collateral Agent may request in order to permit the Collateral Agent to exercise the voting and other rights which it may be entitled to exercise pursuant to Section 3.8(b)(i) and to receive all Distributions which it may be entitled to receive under Section 3.8(b)(ii) hereof.

(iv) All Distributions which are received by any Assignor contrary to the provisions of Section 3.8(b)(ii) hereof shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Assignor and shall immediately be paid over to the Collateral Agent as Collateral in the same form as so received (with any necessary endorsement).

(c) No Assignor is in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Assignor is a party relating to the Pledged Securities pledged by it, and such Assignor is not in violation of any other provisions of any such agreement to which such Assignor is a party, or otherwise in default or violation thereunder. No Securities Collateral pledged by such Assignor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Assignor by any person with respect thereto, and as of the date hereof, there are no certificates, instruments, documents or other writings (other than the Organizational Documents and certificates, if any, delivered to the Collateral Agent) which evidence any Pledged Securities of such Assignor.

(d) In the case of each Assignor which is an issuer of Securities Collateral, such Assignor agrees to be bound by the terms of this Agreement relating to the Securities Collateral issued by it and will comply with such terms insofar as such terms are applicable to it.

(e) In the case of each Assignor which is a partner in a partnership, limited liability company or other entity, such Assignor hereby consents to the extent required by the applicable Organizational Document to the pledge by each other Assignor, pursuant to the terms hereof, of the Pledged Interests in such partnership, limited liability company or other entity and, upon the occurrence and during the continuance of an Event of Default, to the transfer of such Pledged Interests to the Collateral Agent or its nominee and to the substitution of the Collateral Agent or its nominee as a substituted partner or member in such partnership, limited liability company or other entity with all the rights, powers and duties of a general partner or a limited partner or member, as the case may be.

3.9 Further Actions. Each Assignor will, at its own expense, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments and take such further steps, including any and all actions as may be necessary under the Federal Assignment of Claims Act, relating to its Contracts, Instruments and other property or rights covered

by the security interest hereby granted, as the Collateral Agent may reasonably request to preserve and protect its security interest in the Collateral.

ARTICLE IV

SPECIAL PROVISIONS CONCERNING TRADEMARKS

4.1 Additional Representations and Warranties. Each Assignor represents and warrants that it is the true, lawful, sole and exclusive owner of or otherwise has the right to use the Marks and Domain Names listed in Schedule 14 to the Perfection Certificate for such Assignor and that said listed Marks and Domain Names constitute all Marks registered in the United States Patent and Trademark Office or the equivalent thereof in any foreign country that such Assignor presently owns and all Domain Names that such Assignor now owns or uses in connection with its business. Each Assignor further warrants that it has no knowledge of any material third party claim that any aspect of such Assignor's present or contemplated business operations infringes or will infringe any rights in any trademark, service mark or trade name. Each Assignor represents and warrants that it is the beneficial and record owner of all trademark registrations and applications and Domain Name registrations listed in Schedule 14 to the Perfection Certificate for such Assignor and that said registrations are valid, subsisting and have not been canceled and that such Assignor is not aware of any material third party claim that any of said registrations is invalid or unenforceable, or that there is any reason that any of said applications will not pass to registration. Each Assignor hereby grants to the Collateral Agent an absolute power of attorney to sign, upon the occurrence and during the continuance of an Event of Default, any document which may be required by the United States Patent and Trademark Office or secretary of state or equivalent governmental agency of any State of the United States or any foreign jurisdiction in order to effect an absolute assignment of all right, title and interest in each Mark and/or Domain Name, and record the same.

4.2 Licenses and Assignments. Each Assignor hereby agrees not to divest itself of any right under any Mark other than in the ordinary course of business absent prior written approval of the Collateral Agent, except as otherwise permitted by this Agreement or the other Secured Debt Agreements.

4.3 Infringements. Each Assignor agrees, promptly upon learning thereof, to notify the Collateral Agent in writing of the name and address of, and to furnish such pertinent information that may be available with respect to, (i) any party who such Assignor believes is infringing or diluting or otherwise violating in any material respect any of such Assignor's rights in and to any material Mark or Domain Name, or (ii) with respect to any party claiming that such Assignor's use of any material Mark or Domain Name violates in any material respect any property right of that party. Each Assignor further agrees, unless otherwise agreed by the Collateral Agent, to prosecute, in a manner consistent with its past practice and in accordance with reasonable business practices, any Person infringing any material Mark or Domain Name owned by such Assignor and material to the operation of the business.

4.4 Preservation of Marks and Domain Names. Each Assignor agrees to use its material Marks and Domain Names in interstate commerce during the time in which this Agreement is in effect, and to take all such other actions as are reasonably necessary to preserve

such Marks and Domain Names as valid and subsisting trademarks or service marks under the laws of the United States or the relevant foreign jurisdiction; provided, that no Assignor shall be obligated to preserve any Mark or Domain Name in the event such Assignor determines, in its reasonably business judgment, that the preservation of such Mark is no longer necessary in the conduct of its business.

4.5 Maintenance of Registration. Each Assignor shall, at its own expense and in accordance with reasonable business practices, process all documents reasonable to maintain all material Marks and/or Domain Name registrations, including but not limited to affidavits of continued use and applications for renewals of registration in the United States Patent and Trademark Office or equivalent governmental agency in any foreign jurisdiction for all of its registered material Marks, and shall pay all fees and disbursements in connection therewith and shall not abandon any such filing of affidavit of use or any such application of renewal prior to the exhaustion of all administrative and judicial remedies without prior written consent of the Collateral Agent; provided, that no Assignor shall be obligated to maintain any Mark or Domain Name or prosecute any such application for registration in the event that such Assignor determines, in its reasonable business judgment, that such application is no longer necessary in the conduct of its business.

4.6 Future Registered Marks and Domain Names. If any registration for any Mark issues hereafter to any Assignor as a result of any application now or hereafter pending before the United States Patent and Trademark Office or any Domain Name is registered by an Assignor, within 30 days of receipt of the respective certificate or similar indicia of ownership, such Assignor shall deliver to the Collateral Agent a copy of such certificate or similar indicia of ownership, and a grant for security in such Mark and/or Domain Name, to the Collateral Agent and at the expense of such Assignor, confirming the grant of a security interest in such Mark and/or Domain Name to the Collateral Agent hereunder, the form of such grant to be substantially in the form of Exhibit A hereto or in such other form as may be reasonably satisfactory to the Collateral Agent.

4.7 Remedies. If an Event of Default shall occur and be continuing, the Collateral Agent may, by written notice to the relevant Assignor, take any or all of the following actions: (i) declare the entire right, title and interest of such Assignor in and to each of the Marks and Domain Names, together with all trademark rights and rights of protection to the same and the goodwill of such Assignor's business symbolized by said Marks and Domain Names and the right to recover for past infringements thereof, vested in the Collateral Agent for the benefit of the Secured Creditors, in which event such rights, title and interest shall immediately vest in the Collateral Agent for the benefit of the Secured Creditors, and the Collateral Agent shall be entitled to exercise the power of attorney referred to in Section 4.1 hereof to execute, cause to be acknowledged and notarized and to record an absolute assignment with the applicable agency for the purpose of exercising the Collateral Agent's right to dispose of the Marks and Domain Names in accordance with this Agreement and applicable law; (ii) take and use or sell the Marks and the Domain Names and the goodwill of such Assignor's business symbolized by the Marks and the Domain Names and the right to carry on the business and use the assets of such Assignor in connection with which the Marks and the Domain Names have been used; and (iii) direct such Assignor to refrain, in which event such Assignor shall refrain, from using the Marks and Domain

Names in any manner whatsoever, directly or indirectly, and such Assignor shall execute such further documents that the Collateral Agent may request to further confirm this and to transfer ownership of the Marks and Domain Names and registrations and any pending trademark applications therefor in the United States Patent and Trademark Office or the applicable Domain Name registrar or any equivalent government agency or office in any foreign jurisdiction to the Collateral Agent.

ARTICLE V

SPECIAL PROVISIONS CONCERNING PATENTS,
COPYRIGHTS AND TRADE SECRETS

5.1 Additional Representations and Warranties. Each Assignor represents and warrants that it is the true and lawful exclusive owner of or otherwise has the right to use all (i) Trade Secret Rights of such Assignor, (ii) rights in the Patents of such Assignor listed in Schedule 14 to the Perfection Certificate for such Assignor and that said Patents constitute all the patents and applications for patents that such Assignor now owns and (iii) rights in the Copyrights of such Assignor listed in Schedule 14 to the Perfection Certificate for such Assignor, and that such Copyrights include all registrations of copyrights and applications for copyright registrations that such Assignor now owns. Each Assignor further represents and warrants that it has the right to use and practice under all Patents and Copyrights that it owns and has the exclusive right to exclude others from using or practicing under any Patents it owns. Each Assignor further warrants that it has no knowledge of any material third party claim that any aspect of such Assignor's present or contemplated business operations infringes or will infringe any rights in any Patent or Copyright or that such Assignor has misappropriated any Trade Secrets, Trade Secret Rights or other proprietary information. Each Assignor hereby grants to the Collateral Agent an absolute power of attorney to sign, upon the occurrence and during the continuance of any Event of Default, any document which may be required by the United States Patent and Trademark Office or equivalent governmental agency in any foreign jurisdiction or the United states Copyright Office or equivalent governmental agency in any foreign jurisdiction in order to effect an absolute assignment of all right, title and interest in each Patent and Copyright of such Assignor, as the case may be, and to record the same.

5.2 Licenses and Assignments. Each Assignor hereby agrees not to divest-itself of any right under any Patent or Copyright absent prior written approval of the Collateral Agent, except as otherwise permitted by this Agreement or the other Secured Debt Agreements.

5.3 Infringements. Each Assignor agrees, promptly upon learning thereof, to furnish the Collateral Agent in writing with all pertinent information available to such Assignor with respect to any infringement, contributing infringement or active inducement to infringe any of such Assignor's rights in any material Patent or material Copyright or to any claim that the practice of any material Patent or the use of any material Copyright of such Assignor violates any property right of a third party, or with respect to any misappropriation of any material Trade Secret Right of such Assignor or any claim that practice of any material Trade Secret Right of such Assignor violates any property right of a third party. Each Assignor further agrees, absent direction of the Collateral Agent to the contrary, diligently to prosecute, in accordance with reasonable

business practices, any Person infringing any material Patent or material Copyright of such Assignor or any Person misappropriating any material Trade Secret Right of such Assignor.

5.4 Maintenance of Patents and Copyrights. At its own expense, each Assignor shall make timely payment of all post-issuance fees required pursuant to 35 U.S.C. § 41 and any foreign equivalent thereof to maintain in force rights under each of its material Patents, and to apply as permitted pursuant to applicable law for any renewal of each of its material Copyrights, in any case absent prior written consent of the Collateral Agent; provided, that no Assignor shall be obligated to maintain any Patent or Copyright in the event such Assignor determines, in its reasonable business judgment, that the maintenance of such Patent or Copyright is no longer necessary to the conduct of its business.

5.5 Prosecution of Patent or Copyright Applications. At its own expense, each Assignor shall diligently prosecute, in accordance with reasonable business practices and subject to Section 5.4, all of its material applications for Patents listed in Schedule 14 to the Perfection Certificate and for Copyrights listed in Schedule 14 to the Perfection Certificate and shall not abandon any such application prior to exhaustion of all administrative and judicial remedies, absent written consent of the Collateral Agent; provided, that no Assignor shall be obligated to maintain any Patent or Copyright in the event such Assignor determines, in its reasonable business judgment, that the maintenance of such Patent or Copyright is no longer necessary to the conduct of its business.

5.6 Other Patents and Copyrights. Within 30 days of the acquisition or issuance of a United States Patent or of a Copyright registration, or of filing of an application for a United States Patent or Copyright registration, the relevant Assignor shall deliver to the Collateral Agent a copy of said Patent or Copyright or certificate of registration thereof, or application therefor, as the case may be, with a grant of security interest in such Patent or Copyright, as the case may be, to the Collateral Agent and at the expense of such Assignor, confirming the grant of a security interest in such Patent or Copyright, the form of such grant of security interest to be substantially in the form of Exhibit A or B hereto, as applicable, or in such other form as may be satisfactory to the Collateral Agent; provided, that no Assignor shall be obligated to prosecute any application in the event such Assignor determines, in its reasonable business judgment, that such application is no longer necessary to the conduct of its business.

5.7 Remedies. If an Event of Default shall occur and be continuing, the Collateral Agent may by written notice to the relevant Assignor, take any or all of the following actions: (i) declare the entire right, title, and interest of such Assignor in each of the Patents and Copyrights vested in the Collateral Agent for the benefit of the Secured Creditors, in which event such right, title, and interest shall immediately vest in the Collateral Agent for the benefit of the Secured Creditors, and the Collateral Agent shall be entitled to exercise the power of attorney referred to in Section 5.1 hereof to execute, cause to be acknowledged and notarized and to record an absolute assignment with the applicable agency for the purpose of exercising the Collateral Agent's right to dispose of the Patents and Copyrights in accordance with this Agreement and applicable law; (ii) take and use, practice or sell the Patents, Copyrights and Trade Secret Rights; and (iii) direct such Assignor to refrain, in which event such Assignor shall refrain, from practicing the Patents and using the Copyrights and/or Trade Secret Rights directly or indirectly,

and such Assignor shall execute such other and further documents as the Collateral Agent may request further to confirm this and to transfer ownership of the Patents, Copyrights and Trade Secret Rights to the Collateral Agent for the benefit of the Secured Creditors.

ARTICLE VI

PROVISIONS CONCERNING ALL COLLATERAL

6.1 Protection of Collateral Agent's Security. Except as otherwise permitted by the Secured Debt Agreements, no Assignor will do anything to impair the rights of the Collateral Agent in the Collateral. Each Assignor will at all times keep its Inventory and Equipment insured in favor of the Collateral Agent as an additional insured, loss payee and mortgagee, at such Assignor's own expense to the extent and in the manner provided in the Secured Debt Agreements. If any Assignor shall fail to insure its Inventory and Equipment in accordance with the terms of the respective Secured Debt Agreements, or if any Assignor shall fail to so endorse and deposit all policies or certificates with respect thereto, the Collateral Agent shall have the right upon provision of notice to the Parent (but shall be under no obligation) to procure such insurance and such Assignor agrees to promptly reimburse the Collateral Agent for all costs and expenses of procuring such insurance. Except as otherwise permitted to be retained or expended by the relevant Assignor pursuant to the Credit Agreement (or, after the First Lien Obligations Termination Date, any other Secured Debt Agreement), the Collateral Agent shall, at the time such proceeds of such insurance are distributed to the Secured Creditors, apply such proceeds in accordance with the Credit Agreement (or, after the First Lien Obligations Termination Date, in accordance with the instructions of the Required Senior Creditors), or after the Obligations have been accelerated or otherwise become due and payable, in accordance with Section 7.5 hereof. Each Assignor assumes all liability and responsibility in connection with the Collateral acquired by it and the liability of such Assignor to pay the Obligations shall in no way be affected or diminished by reason of the fact that such Collateral may be lost, destroyed, stolen, damaged or for any reason whatsoever unavailable to such Assignor.

6.2 Warehouse Receipts Non-Negotiable. Each Assignor agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its Inventory, such warehouse receipt or receipt in the nature thereof shall not be "negotiable" (as such term is used in Section 7-104 of the Uniform Commercial Code as in effect in any relevant jurisdiction or under other relevant law).

6.3 Further Actions. Each Assignor will, at its own expense, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such lists, descriptions and designations of its Collateral, warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments and take such further steps relating to the Collateral and other property or rights covered by the security interest hereby granted which the Collateral Agent deems reasonably appropriate or advisable to perfect, preserve or protect its security interest in the Collateral.

6.4 Financing Statements. Each Assignor agrees to deliver to the Collateral Agent such financing statements, in form acceptable to the Collateral Agent, as the Collateral Agent may from time to time reasonably request or as are reasonably necessary or desirable in the reasonable opinion of the Collateral Agent to establish and maintain a valid, enforceable, first priority perfected security interest, as well as a second priority security interest, in the Collateral (subject, in each case, to the Permitted Liens) as provided herein and the other rights and security contemplated hereby, all in accordance with the Uniform Commercial Code as enacted in any and all relevant jurisdictions or any other relevant law. Each Assignor will pay any applicable filing fees, recordation taxes and related expenses relating to its Collateral. Each Assignor hereby authorizes the Collateral Agent to file any such financing statements (including, without limitation, financing statements which list the Collateral specifically and/or "all assets" as collateral with appropriate exceptions for Excluded Collateral) without the signature of such Assignor where permitted by law.

6.5 Additional Information. Each Assignor will, at its own expense, from time to time upon the reasonable request of the Collateral Agent, promptly (and in any event within 10 days after its receipt of the respective request) furnish to the Collateral Agent such information with respect to the Collateral (including the identity of the Collateral or such components thereof as may have been requested by the Collateral Agent, the value and location of such Collateral, etc.) as may be reasonably requested by the Collateral Agent.

ARTICLE VII

REMEDIES UPON OCCURRENCE OF EVENT OF DEFAULT

7.1 Remedies; Obtaining the Collateral upon Default. Each Assignor agrees that, if any Event of Default shall have occurred and be continuing, then and in every such case, the Collateral Agent, in addition to any rights now or hereafter existing under applicable law and under the other provisions of this Agreement, shall have all rights as a secured creditor under the Uniform Commercial Code in all relevant jurisdictions and such additional rights and remedies to which a secured creditor is entitled under the laws in effect in all relevant jurisdictions and may also:

(i) personally, or by agents or attorneys, immediately take possession of the Collateral or any part thereof, from such Assignor or any other Person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon such Assignor's premises where any of the Collateral is located and remove the same and use in connection with such removal any and all services, supplies, aids and other facilities of such Assignor;

(ii) instruct the obligor or obligors on any agreement, instrument or other obligation (including, without limitation, the Contracts) constituting Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent and may exercise any and all remedies of such Assignor in respect of such Collateral;

(iii) instruct all banks, Securities Intermediaries and Commodity Intermediaries which have entered into control agreements with the Collateral Agent to transfer all monies, securities and instruments held by such persons to the Cash Collateral Account and withdraw all monies, securities and instruments in the Cash Collateral Account for application to the Obligations in accordance with Section 7.5 hereof;

(iv) sell, assign or otherwise liquidate, or direct such Assignor to sell, assign or otherwise liquidate, any or all of the Collateral or any part thereof in accordance with Section 7.2 hereof, or direct the relevant Assignor to sell, assign or otherwise liquidate any or all of the Collateral or any part thereof, and, in each case, take possession of the proceeds of any such sale or liquidation;

(v) take possession of the Collateral or any part thereof, by directing the relevant Assignor in writing to deliver the same to the Collateral Agent at any place or places designated by the Collateral Agent, in which event such Assignor shall at its own expense:

(x) forthwith cause the same to be moved to the place or places so designated by the Collateral Agent and there delivered to the Collateral Agent;

(y) store and keep any Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent as provided in Section 7.2 hereof; and

(z) while the Collateral shall be so stored and kept, provide such guards, other security and maintenance services as shall be necessary to protect the same and to preserve and maintain it in good condition;

(vi) license or sublicense, whether on an exclusive or nonexclusive basis, any Marks, Domain Names, Patents or Copyrights included in the Collateral for such term and on such conditions and in such manner as the Collateral Agent shall in its sole judgment determine;

(vii) apply any monies constituting Collateral or proceeds thereof in accordance with Section 7.5 hereof; and

(viii) take any other action as specified in clauses (1) through (5), inclusive, of Section 9-607 of the New York Uniform Commercial Code;

it being understood that each Assignor's obligation so to deliver the Collateral is of the essence of this Agreement and that, accordingly, upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by such Assignor of said obligation. By accepting the benefits of this Agreement and each other Security Document, the Secured Creditors expressly acknowledge and agree that this Agreement and each other Security Document may be enforced only by the action of the Collateral Agent acting upon the instructions of the Required Secured Creditors and that no other Secured Creditor shall have any right individually to seek to enforce or to enforce this Agreement or any other Security

Document or to realize upon the security to be granted hereby or thereby, it being understood and agreed that such rights and remedies shall be exercised exclusively by the Collateral Agent for the benefit of the Secured Creditors upon the terms of this Agreement (including Annex D hereto) and the other Security Documents.

7.2 Remedies; Disposition of the Collateral. Any Collateral repossessed by the Collateral Agent under or pursuant to Section 7.1 hereof and any other Collateral, whether or not so repossessed by the Collateral Agent, may, during the continuance of an Event of Default, be sold, assigned, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms as the Collateral Agent may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable. Any of the Collateral may, during the continuance of an Event of Default, be sold, leased or otherwise disposed of, in one or more parcels at public or private sale in the condition in which the same existed when taken by the Collateral Agent or after any overhaul or repair at the expense of the relevant Assignor for cash, on credit or for future delivery, and at such price or prices and upon such other terms which the Collateral Agent shall determine to be commercially reasonable. The Collateral Agent may, without notice or publication, adjourn any public or private disposition or cause the same to be adjourned from time to time by announcement at the time and place fixed for the disposition, and such disposition may be made at any time or place to which the disposition may be so adjourned. To the extent permitted by any such requirement of law, the Collateral Agent on behalf of the Secured Creditors (or certain of them) may bid for and become the purchaser of the Collateral or any item thereof offered for sale in accordance with this Section without accountability to the relevant Assignor (except to the extent of surplus money received as provided in Section 7.5). If, under mandatory requirements of applicable law, the Collateral Agent shall be required to make disposition of the Collateral within a period of time which does not permit the giving of notice to the relevant Assignor as hereinabove specified, the Collateral Agent need give such Assignor only such notice of disposition as shall be reasonably practicable in view of such mandatory requirements of applicable law. Each Assignor agrees to do or cause to be done all such other acts and things as may be reasonably necessary to make such sale or sales of all or any portion of the Collateral of such Assignor valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at such Assignor's expense. Each Assignor acknowledges and agrees that, to the extent notice of sale or other disposition of Collateral shall be required by law, ten (10) days' prior notice to such Assignor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to any Assignor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

7.3 Certain Sales of Pledged Collateral.

(i) Each Assignor recognizes that, by reason of certain prohibitions contained in law, rules, regulations or orders of any Government Authority, the Collateral Agent may be

compelled, with respect to any sale of all or any part of the Collateral, to limit purchasers to those who meet the requirements of such Governmental Authority. Each Assignor acknowledges that any such sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable law, the Collateral Agent shall have no obligation to engage in public sales.

(ii) Each Assignor recognizes that, by reason of certain prohibitions contained in the Securities Act, and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Securities Collateral and Investment Property, to limit purchasers to persons who will agree, among other things, to acquire such Securities Collateral or Investment Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Assignor acknowledges that any such private sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have not obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral or Investment Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would agree to do so.

(iii) Notwithstanding the foregoing, each Assignor shall, upon the occurrence and during the continuance of any Event of Default, at the reasonable request of the Collateral Agent, for the benefit of the Collateral Agent, cause any registration, qualification under or compliance with any Federal or state securities law or laws to be effected with respect to all or any part of the Securities Collateral as soon as practicable and at the sale cost and expense of the Assignors. Each Assignor will use its commercially reasonable efforts to cause such registration to be effected (and be kept effective) and will use its commercially reasonable efforts to cause such qualification and compliance to be effected (and be kept effective) as may be so requested and as would permit or facilitate the sale and distribution of such Securities Collateral including registration under the Securities Act (or any similar statute then in effect), appropriate qualifications under applicable blue sky or other state securities laws and appropriate compliance with all other requirements of any Governmental Authority. Each Assignor shall use its commercially reasonable efforts to cause the Collateral Agent to be kept advised in writing as to the progress of each such registration, qualification or compliance and as to the completion thereof, shall furnish to the Collateral Agent such number of prospectuses, offering circulars or other documents incident thereto as the Collateral Agent from time to time may request, and shall indemnify and shall cause the issuer of the Securities Collateral to indemnify the Collateral Agent and all others participating in the distribution of such Securities Collateral against all claims, losses, damages and liabilities caused by any untrue statement (or alleged untrue statement) of a material fact contained therein (or in any related registration statement, notification or

the like) or by any omission (or alleged omission) to state therein (or in any related registration statement, notification or the like) a material fact required to be stated therein or necessary to make the statements therein not misleading.

(iv) If the Collateral Agent determines to exercise its right to sell any or all of the Securities Collateral or Investment Property, upon written request, the applicable Assignor shall from time to time furnish to the Collateral Agent all such information as the Collateral Agent may request in order to determine the number of securities included in the Securities Collateral or Investment Property which may be sold by the Collateral Agent as exempt transactions under the Securities Act and the rules of the Securities and Exchange Commission thereunder, as the same are form time to time in effect.

(v) Each Assignor further agrees that a breach of any of the covenants contained in this Section 7.3 will cause irreparable injury to the Collateral Agent and other Secured Parties, that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 7.3 shall be specifically enforceable against such Assignor, and such Assignor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing.

7.4 Waiver of Claims. Except as otherwise provided in this Agreement, EACH ASSIGNOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE AND JUDICIAL HEARING IN CONNECTION WITH THE COLLATERAL AGENT'S TAKING POSSESSION OR THE COLLATERAL AGENT'S DISPOSITION OF ANY OF THE COLLATERAL, INCLUDING, WITHOUT LIMITATION, ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES AND ANY SUCH RIGHT WHICH SUCH ASSIGNOR WOULD OTHERWISE HAVE UNDER THE CONSTITUTION OR ANY STATUTE OF THE UNITED STATES OR OF ANY STATE, and such Assignor hereby further waives, to the extent permitted by law:

(i) all damages occasioned by such taking of possession or any such disposition except any damages which are the direct result of the Collateral Agent's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision);

(ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder; and

(iii) all rights of redemption, appraisement, valuation, stay, extension or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Agreement or the absolute sale of the Collateral or any portion thereof, and each Assignor, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws.

Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral hereunder shall operate to divest all right, title, interest, claim and demand, either at law and

in equity, of the relevant Assignor therein and thereto, and shall be a perpetual bar both at law and in equity against such Assignor and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through and under such Assignor.

7.5 Application of Proceeds. (a) All moneys collected by the Collateral Agent upon any sale or other disposition of any Collateral of any Assignor pursuant to the enforcement of this Agreement or the exercise of any of the remedial provisions hereof (or, if any other Security Document requires proceeds of "collateral" thereunder to be applied in accordance with the terms of this Agreement, by such "collateral agent" thereunder pursuant to the enforcement of such Security Document or the exercise of the remedial provisions thereof), together with all other moneys received by the Collateral Agent hereunder (or such "collateral agent" under such other Security Documents) (including all monies received in respect of post-petition interest) as a result of any such enforcement or the exercise of any such remedial provisions or as a result of any distribution of any Collateral of any Assignor (or "collateral" under any other Security Document, as the case may be) upon the bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding involving the readjustment of the obligations and indebtedness of any Assignor, or the application of any Collateral (or "collateral" under any other Security Document, as the case may be) to the payment thereof or any distribution of Collateral (or "collateral" under any other Security Document, as the case may be) upon the liquidation or dissolution of any Assignor, or the winding up of the assets or business of any Assignor or under any Title Insurance Policies, shall be applied as follows (subject to the prior application of proceeds of certain Collateral in respect of Deposit Accounts as contemplated by the last sentence of Section 10.2(j) of the Credit Agreement, to which application each of the Secured Parties hereby consents):

(i) first, to the payment of all Obligations of such Assignor owing to the Collateral Agent of the type described in clauses (iii), (iv) and (v) of the definition of "Obligations";

(ii) second, to the extent proceeds remain after the application pursuant to the preceding clause (i), an amount equal to the outstanding First Lien Obligations (including, without limitation, all interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of any Assignor at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such case, proceeding or other action) of such Assignor shall be paid to the Bank Creditors as provided in Section 7.5(e) hereof, with each Bank Creditor receiving an amount equal to its outstanding First Lien Obligations of such Assignor or, if the proceeds are insufficient to pay in full all such First Lien Obligations of such Assignor, its Pro Rata Share of the amount remaining to be distributed;

(iii) third, to the extent proceeds remain after the application pursuant to the preceding clauses (i) and (ii), an amount equal to the outstanding Trustee Obligations of such Assignor shall be paid to the Senior Second Lien Notes Indenture Trustee;

(iv) fourth, to the extent proceeds remain after the application pursuant to the preceding clauses (i) through (iii), an amount equal to the outstanding Senior Second

Lien Notes Obligations (including, without limitation, all interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of any Assignor at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such case, proceeding or other action) of such Assignor shall be paid to the Senior Second Lien Notes Indenture Trustee as provided in Section 7.5(e) hereof (for the benefit of the Senior Second Lien Notes Indenture Trustee and the other Senior Second Lien Notes Creditors), with each such Senior Second Lien Notes Creditor to receive an amount equal to its outstanding Senior Second Lien Notes Obligations of such Assignor or, if the proceeds are insufficient to pay in full all such Senior Second Lien Notes Obligations of such Assignor, the portion of the amount remaining to be distributed to which such Senior Second Lien Notes Creditor is entitled pursuant to the terms of the Senior Second Lien Notes Indenture; and

(v) fifth, to the extent proceeds remain after the application pursuant to the preceding clauses (i) through (iv), inclusive, and following the termination of this Agreement pursuant to Section 10.8(a) hereof, to the relevant Assignor or to whoever may be lawfully entitled to receive such surplus.

(b) For purposes of this Agreement "Pro Rata Share" shall mean, when calculating a Secured Creditor'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 Secured Creditor's First Lien Obligations and the denominator of which is the then outstanding amount of all First Lien Obligations.

(c) Each of the Secured Creditors agrees and acknowledges that if the Bank Creditors are to receive a distribution in accordance with this Section 7.5 on account of undrawn amounts with respect to LC Facility Letters of Credit issued (or deemed issued) under the Credit Agreement, such amounts shall be paid to the LC Facility Administrative Agent under the Credit Agreement and held by it, for the equal and ratable benefit of the Bank Creditors, as cash security for the repayment of First Lien Obligations owing to the Bank Creditors as such. If any amounts are held as cash security pursuant to the immediately preceding sentence, then upon the termination of all outstanding LC Facility Letters of Credit, and after the application of all such cash security to the repayment of all First Lien Obligations owing to the Bank Creditors after giving effect to the termination of all such LC Facility Letters of Credit, if there remains any excess cash, such excess cash shall be returned by the LC Facility Administrative Agent to the Collateral Agent for distribution in accordance with Section 7.5(a) hereof.

(d) Except as set forth in Section 7.5(c) hereof, all payments required to be made to any Secured Creditor hereunder by the Collateral Agent shall be made (x) if to the Bank Creditors, to the LC Facility Administrative Agent under the Credit Agreement for the account of (and for distribution to) the Bank Creditors and (y) if to the Senior Second Lien Notes Creditors, to the Senior Second Lien Notes Indenture Trustee under the Senior Second Lien Notes Indenture for the account of (and for distribution to) the Senior Second Lien Notes Indenture Trustee and the Senior Second Lien Noteholders in accordance with the requirements of the Senior Second Lien Notes Indenture.

(e) For purposes of making payments in accordance with this Section 7.5, the Collateral Agent shall be entitled to rely upon (i) the LC Facility Administrative Agent under the Credit Agreement and (ii) the Senior Second Lien Notes Indenture Trustee under the Senior Second Lien Notes Indenture for a determination (which each Authorized Representative for any Secured Creditor and the Secured Creditors agree to provide upon request of the Collateral Agent) of the outstanding First Lien Obligations and Senior Second Lien Notes Obligations owed to the Bank Creditors or the Senior Second Lien Notes Creditors, as the case may be.

(f) Subject to Section 10.12, it is understood and agreed that each of the Assignors shall remain jointly and severally liable to the relevant Secured Creditors to the extent of any deficiency between (x) the amount of the proceeds of the Collateral received by such Secured Creditors hereunder and (y) the aggregate amount of the Obligations.

(g) Notwithstanding anything to the contrary contained in this Agreement or in any other Security Document, the Senior Second Lien Notes Creditors, by accepting the benefits of this Agreement, hereby expressly acknowledge and agree that they shall not be entitled to receive any application pursuant to Section 7.5(a) hereof in respect of any Second Lien Excluded Collateral.

7.6 Remedies Cumulative. Each and every right, power and remedy hereby specifically given to the Collateral Agent shall be in addition to every other right, power and remedy specifically given under this Agreement or any other Secured Debt Agreement now or hereafter existing at law, in equity or by statute and each and every right, power and remedy whether specifically herein given or otherwise existing may, subject to the last sentence of Section 7.1 hereof, be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Collateral Agent. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Collateral Agent in the exercise of any such right, power or remedy and no renewal or extension of any of the Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Default or Event of Default or an acquiescence therein. No notice to or demand on any Assignor in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Collateral Agent to any other or further action in any circumstances without notice or demand. In the event that the Collateral Agent shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Collateral Agent may recover expenses, including reasonable attorneys' fees, and the amounts thereof shall be included in such judgment.

7.7 Discontinuance of Proceedings. In case the Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement or under any other Security Document by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case the relevant Assignor, the Collateral Agent and each holder of any of the Obligations shall be restored to their former positions and rights hereunder with respect to the Collateral, subject to the security interest created under this Agreement

and under the other Security Documents, and all rights, remedies and powers of the Collateral Agent shall continue as if no such proceeding had been instituted.

ARTICLE VIII

INDEMNITY

8.1 Indemnity. (a) Each Assignor jointly and severally agrees to indemnify, reimburse and hold the Collateral Agent, each other Secured Creditor that is an indemnitor under Section 6 of Annex D hereto, and their respective successors, assigns, employees, officers, directors, affiliates, agents and servants (hereinafter in this Section 8.1 referred to individually as an "Indemnitee," and, collectively, as "Indemnitees") harmless from any and all liabilities, obligations, losses, damages, injuries, penalties, claims, demands, actions, suits, judgments and any and all costs, expenses or disbursements (including reasonable attorneys' fees and expenses) (for the purposes of this Section 8.1 the foregoing are collectively called " expenses") of whatsoever kind and nature imposed on, asserted against or incurred by any of the Indemnitees in any way relating to or arising out of this Agreement, any other Secured Debt Agreement or any other document executed in connection herewith or therewith or in any other way connected with the administration of the transactions contemplated hereby or thereby or the enforcement of any of the terms of, or the preservation of any rights under, any thereof, or in any way relating to or arising out of the manufacture, ownership, ordering, purchase, delivery, control, acceptance, lease, financing, possession, operation, condition, sale, return or other disposition or use of the Collateral (including, without limitation, latent or other defects, whether or not discoverable), the violation by an Assignor of the laws of any country, state or other governmental body or unit, any tort (including, without limitation, claims arising or imposed under the doctrine of strict liability, or for or on account of injury to or the death of any Person (including any Indemnitee), or property damage), or contract claim; provided that no Indemnitee shall be indemnified pursuant to this Section 8.1(a) for expenses, losses, damages or liabilities to the extent caused by the gross negligence or willful misconduct of such Indemnitee (as determined by a court of competent jurisdiction in a final and non-appealable decision). Each Assignor agrees that upon written notice by any Indemnitee of the assertion of such a liability, obligation, loss, damage, injury, penalty, claim, demand, action, suit or judgment, the relevant Assignor shall assume full responsibility for the defense thereof. Each Indemnitee agrees to use its commercially reasonable efforts to promptly notify the relevant Assignor of any such assertion of which such Indemnitee has knowledge.

(b) Without limiting the application of Section 8.1(a) hereof, each Assignor agrees, jointly and severally, to pay, or reimburse the Collateral Agent for, any and all reasonable fees, costs and expenses of whatever kind or nature incurred in connection with the creation, preservation or protection of the Collateral Agent's Liens on, and security interest in, the Collateral, including, without limitation, all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payment or discharge of any taxes or Liens upon or in respect of the Collateral, premiums for insurance with respect to the Collateral and all other reasonable fees, costs and expenses in connection with protecting, maintaining or preserving the Collateral and the Collateral Agent's interest therein, whether through judicial proceedings or

otherwise, or in defending or prosecuting any actions, suits or proceedings arising out of or relating to the Collateral.

(c) Without limiting the application of Section 8.1(a) or (b) hereof, each Assignor agrees, jointly and severally, to pay, indemnify and hold each Indemnitee harmless from and against any loss, costs, damages and expenses which such Indemnitee may suffer, expend or incur in consequence of or growing out of any material misrepresentation by any Assignor in this Agreement, any other Secured Debt Agreement or in any writing contemplated by or made or delivered pursuant to or in connection with this Agreement or any other Secured Debt Agreement.

(d) If and to the extent that the obligations of any Assignor under this Section 8.1 are unenforceable for any reason, such Assignor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law.

8.2 Indemnity Obligations Secured by Collateral; Survival . Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Obligations secured by the Collateral. The indemnity obligations (but not the security interests in the "Collateral") of each Assignor contained in this Article VIII shall continue in full force and effect notwithstanding the full payment of all Obligations, the termination of all Letters of Credit, and notwithstanding the discharge thereof.

ARTICLE IX

DEFINITIONS

The following terms shall have the meanings herein specified. Such definitions shall be equally applicable to the singular and plural forms of the terms defined. Except as otherwise defined in this Article IX, terms used in this Agreement shall have the meaning provided such terms in the Credit Agreement (or, at any time on and after the First Lien Obligations Termination Date, the Credit Agreement as in effect on such date (without giving effect to the termination thereof)).

"Accounts Collateral" shall have the meaning given to such term in the Credit Agreement as in effect on the date of this Agreement.

"Additional Pledged Interests" shall mean, collectively, with respect to each Assignor, (i) all Capital Stock of whatever class of any issuer of Initial Pledged Interests or any interest in any such issuer, together with all rights, privileges, authority and powers of such Assignor relating to such interests in each such issuer or under any Organizational Document of any such issuer, and the certificates, instruments and agreements representing such membership, partnership or other interests and any and all interest of such Assignor in the entries on the books of any financial intermediary pertaining to such membership, partnership or other equity interests from time to time acquired by such Assignor in any manner and (ii) all Capital Stock of each limited liability

company, partnership or other entity (other than a corporation) hereafter acquired or formed by such Assignor and all Capital Stock of whatever class of such limited liability company, partnership or other entity, together with all rights, privileges, authority and powers of such Assignor relating to such interests or under any Organizational Document of any such issuer, and the certificates, instruments and agreements representing such membership, partnership or other equity interests and any and all interest of such Assignor in the entries on the books of any financial intermediary pertaining to such membership, partnership or other interests, from time to time acquired by such Assignor in any manner.

"Additional Pledged Shares" shall mean, collectively, with respect to each Assignor, (i) all Capital Stock of whatever class of any issuer of the Initial Pledged Shares or any other equity interest in any such issuer, together with all rights, privileges, authority and powers of such Credit Party relating to such interests issued by any such issuer under any Organizational Document of any such issuer, and the certificates, instruments and agreements representing such interests and any and all interest of such Assignor in the entries on the books of any financial intermediary pertaining to such interests, from time to time acquired by such Assignor in any manner and (ii) all the issued and outstanding shares of Capital Stock of each corporation hereafter acquired or formed by such Assignor of whatever class of such corporation, together with all rights, privileges, authority and powers of such Assignor relating to such Capital Stock or under any Organizational Document of such corporation, and the certificates, instruments and agreements representing such shares and any and all interest of such Assignor in the entries on the books of any financial intermediary pertaining to such shares, from time to time acquired by such Assignor in any manner.

"As-Extracted Collateral" shall mean "as-extracted collateral" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Authorized Representative" shall have the meaning provided in Annex D hereto.

"Bank Creditors" shall mean the "LC Facility Secured Parties" as defined in the Credit Agreement and any other Persons holding First Lien Obligations.

"Business Day" shall mean any day excluding Saturday, Sunday and any day which shall be in the City of New York a legal holiday or a day on which banking institutions are authorized by law to close.

"Cash Collateral Account" shall mean a non-interest-bearing cash collateral account maintained with, and in the sole dominion and control of, the Collateral Agent for the benefit of the Secured Creditors.

"Chattel Paper" shall mean "chattel paper" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York. Without limiting the foregoing, the term "Chattel Paper" shall in any event include all Tangible Chattel Paper and all Electronic Chattel Paper.

"Code" shall mean the Internal Revenue Code of 1986, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

"Commercial Tort Claims" shall mean "commercial tort claims" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Commodity Account" shall mean any "commodity account" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Commodity Intermediary" shall mean any "commodity intermediary" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Contract Rights" shall mean all rights of any Assignor under each Contract, including, without limitation, (i) any and all rights to receive and demand payments under any or all Contracts, (ii) any and all rights to receive and compel performance under any or all Contracts and (iii) any and all other rights, interests and claims now existing or in the future arising in connection with any or all Contracts.

"Contracts" shall mean all contracts between any Assignor and one or more additional parties to the extent the grant by an Assignor of a security interest pursuant to this Agreement in its right, title and interest in any such contract is not validly prohibited by such contract without the consent of any other party thereto or would not give any other party to such contract the right to terminate its obligations thereunder; provided, that the foregoing limitation shall not affect, limit, restrict or impair the grant by an Assignor of a security interest pursuant to this Agreement in any account or any money or other amounts due or to become due under any such contract, agreement, instrument or indenture.

"Copyrights" shall mean any United States or foreign copyright owned by any Assignor now or hereafter, including any registrations of any Copyright in the United States Copyright Office or the equivalent thereof in any foreign country, as well as any application for a United States or foreign copyright registration now or hereafter made with the United States Copyright Office or the equivalent thereof in any foreign jurisdiction by any Assignor.

"Credit Documents" shall mean the "Financing Documents" as defined in the Credit Agreement and shall include any credit documentation executed and delivered in connection with any replacement or refinancing Credit Agreement.

"Default" shall mean any event which, with notice or lapse of time, or both, would constitute an Event of Default.

"Deposit Account Control Agreement" shall mean an agreement in writing, in form and substance satisfactory to the Collateral Agent, by and among such Collateral Agent, an Assignor, and any bank at which any Deposit Account of such Assignor is at any time maintained which provides that such bank will comply with instructions originated by such Collateral Agent directing disposition of the funds in the Deposit Account without further consent by such Credit Party and such other terms and conditions as such Collateral Agent may require.

"Deposit Accounts" shall mean all "deposit accounts" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Distributions" shall mean, collectively, with respect to each Assignor, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity) or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Securities, from time to time received, receivable or otherwise distributed to such Assignor in respect of or in exchange for any or all of the Pledged Securities or Intercompany Notes.

"Documents" shall mean "documents" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Domain Names" shall mean all Internet domain names and associated URL addresses in or to which any Assignor now or hereafter has any right, title or interest.

"Electronic Chattel Paper" shall mean "electronic chattel paper" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Equipment" shall mean any "equipment" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York now or hereafter owned by any Assignor and, in any event, shall include, but shall not be limited to, all machinery, equipment, furnishings and fixtures now or hereafter owned by any Assignor and any and all additions, substitutions and replacements of any of the foregoing and all accessories thereto, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

"Event of Default" shall mean (i) any Event of Default (or similar term) under, and as defined in, the Credit Agreement, (ii) any payment default in respect of the Obligations (in any such case, after the expiration of any applicable grace period) and (iii) on and after the First Lien Obligations Termination Date, any Event of Default (or similar term) under, and as defined in, the Senior Second Lien Notes Indenture.

"Excluded Accounts" shall mean (i) any Deposit Account used exclusively for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the Assignors' employees and (ii) all other Deposit Accounts to the extent such Deposit Accounts do not have an aggregate closing daily balance in excess of $100,000 for any 10 consecutive day period.

"Excluded Collateral" shall mean the following:

(a) any lease, Contract, Permit or General Intangibles which are now or hereafter held by any Assignor as licensee, lessee or otherwise, to the extent that such lease, Contract, Permit or General Intangibles contain a valid prohibition against the granting of a security interest therein (but solely to the extent that any such restriction shall be enforceable under applicable law) which consent shall not have been obtained; provided,

however, that Excluded Collateral shall not include any and all proceeds of such Contracts, Permits and General Intangibles to the extent that the assignment or encumbering of such proceeds is not so restricted;

(b) any Equipment or Inventory which are subject to any Permitted Lien to the extent that the terms of the Indebtedness securing such Permitted Lien expressly prohibit assigning or granting any such security interest in the respective Assignor's rights and obligations thereunder; provided, however, that Excluded Collateral shall not include any and all proceeds of such Equipment or Inventory to the extent that the assignment or encumbering of such proceeds is not so restricted;

(c) any Accounts Collateral; and

(d) the outstanding voting stock in excess of 65% of the voting power of all classes of voting stock of any "controlled foreign corporation" (as defined in Section 957(a) of the Code) entitled to vote.

"First Lien Obligations" shall mean the "LC Facility Obligations" as defined in the Credit Agreement and any obligations in respect of any refinancing of the LC Facility Obligations under any Credit Document.

"First Lien Obligations Termination Date" shall mean that date upon which all First Lien Obligations (other than those arising from indemnities for which no request has been made) have been paid in full in cash in accordance with the terms of the respective Credit Documents and all Commitments and LC Facility Letters of Credit under the Credit Agreement have been terminated.

"General Intangibles" means "general intangibles" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Goods" shall mean "goods" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Health-Care-Insurance Receivable" shall mean any "health-care-insurance receivable" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Indemnitee" shall have the meaning provided in Section 8.1 of this Agreement.

"Initial Pledged Interests" shall mean, with respect to each Assignor, all Capital Stock (other than Capital Stock of an issuer which is a corporation), as applicable, of each issuer described in Schedule 11 annexed to the Perfection Certificate, together with all rights, privileges, authority and powers of such Assignor in and to each such issuer or under any Organizational Document of each such issuer, and the certificates, instruments and agreements representing such Capital Stock and any and all interest of such Assignor in the entries on the books of any financial intermediary pertaining to such Capital Stock.

"Initial Pledged Shares" shall mean, collectively, with respect to each Assignor, the issued and outstanding shares of Capital Stock of each issuer (other than Parent) that is a corporation and described in Schedule 11 annexed to the Perfection Certificate together with all rights, privileges, authority and powers of such Assignor relating to such interests in each such issuer or under any Organizational Document of each such issuer, and the certificates, instruments and agreements representing such Capital Stock and any and all interest of such Assignor in the entries on the books of any financial intermediary pertaining to such Capital Stock.

"Instrument" shall mean "instrument" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Intercompany Notes" shall mean, with respect to each Assignor, all intercompany notes described in Schedule 12 annexed to the Perfection Certificate and intercompany notes hereafter acquired by such Assignor and all certificates, instruments or agreements evidencing such intercompany notes, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof to the extent permitted pursuant to the terms hereof.

"Inventory" shall mean merchandise, inventory and goods, and all additions, substitutions and replacements thereof and all accessions thereto, wherever located, together with all goods, supplies, incidentals, packaging materials, labels, materials and any other items used or usable in manufacturing, processing, packaging or shipping same; in all stages of production — from raw materials through work-in-process to finished goods — and all products and proceeds of whatever sort and wherever located and any portion thereof which may be returned, rejected, reclaimed or repossessed by the Collateral Agent from any Assignor's customers, and shall specifically include all "inventory" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York, now or hereafter owned by any Assignor.

"Investment Property" shall mean "investment property" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Investment Property Control Agreement" shall mean an agreement in writing, in form and substance satisfactory to the Collateral Agent, by and among the Collateral Agent, an Assignor and any Securities Intermediary, Commodity Intermediary or other person who has custody, control or possession of any Investment Property of such Credit Party acknowledging that such Securities Intermediary, Commodity Intermediary or other person has custody, control or possession of such Investment Property on behalf of the Collateral Agent, that it will comply with entitlement orders originated by the Collateral Agent with respect to such Investment Property, or other instructions of the Collateral Agent, or (as the case may be) apply any value distributed on account of any commodity contract as directed by the Collateral Agent, in each case, without the further consent of such Credit Party and including such other terms and conditions as the Collateral Agent may require.

"Letter-of-Credit Rights" shall mean "letter-of-credit rights" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Liens" shall mean any security interest, mortgage, pledge, lien, claim, charge, encumbrance, title retention agreement, lessor's interest in a financing lease or analogous instrument in, of or on any Assignor's property.

"Location" shall mean, for any Assignor, such Assignor's "location" as determined pursuant to Section 9-307 of the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Marks" shall mean all right, title and interest in and to any United States or foreign trademarks, service marks and trade names now held or hereafter acquired by any Assignor, including any registration or application for registration of any trademarks and service marks in the United States Patent and Trademark Office, or the equivalent thereof in any State of the United States or in any foreign country, and any trade dress, including logos, designs, trade names, company names, business names, fictitious business names and other business identifiers used by any Assignor in the United States or any foreign country.

"Motor Vehicle Laws" shall mean all U.S. Federal, state, provincial and local laws, regulations, rules and judicial or agency determinations and orders applicable to the ownership and/or operation of vehicles (including, without limitation, the Rolling Stock), or the business of the transportation of goods by motor vehicle, including, without limitation, laws, regulations, rules and judicial or agency determinations and orders promulgated or administered by the Federal Highway Administration, the Federal Motor Carrier Safety Administration, the National Highway Traffic Safety Administration, the Surface Transportation Board and other state, provincial and local Governmental Authorities with respect to vehicle safety and registration and motor carrier insurance, financial assurance, credit extension, contract carriage, tariff and reporting requirements.

"Obligations" shall mean and include, as to any Assignor, all of the following:

(i) the First Lien Obligations;

(ii) the Senior Second Lien Notes Obligations;

(iii) any and all sums advanced by the Collateral Agent in order to preserve the Collateral or preserve its security interest in the Collateral;

(iv) in the event of any proceeding for the collection or enforcement of any indebtedness, obligations or liabilities of each Assignor referred to in preceding clauses (i) and (ii) after an Event of Default shall have occurred and be continuing, the reasonable expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, or of any exercise by the Collateral Agent of its rights hereunder, together with reasonable attorneys' fees and court costs; and

(v) all amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement under Section 8.1 of this Agreement.

It is acknowledged and agreed that the "Obligations" shall include extensions of credit of the types described above, whether outstanding on the date of this Agreement or extended from time to time after the date of this Agreement.

"Patents" shall mean any United States or foreign patent with respect to which any Assignor now or hereafter has any right, title or interest, and any divisions, continuations (including, but not limited to, continuations-in-part) and improvements thereof, as well as any application for a United States or foreign patent now or hereafter made by any Assignor.

"Perfection Certificate" shall mean the Perfection Certificate of Assignors constituting Exhibit A-1 hereto containing material information with respect to Assignors, their business and assets provided by or on behalf of Assignors to Collateral Agent in connection with the preparation of this Agreement as the same shall be supplemented from time to time by a Perfection Certificate Supplement or otherwise.

"Perfection Certificate Supplement" shall mean a certificate supplement in the form of Exhibit A-2 hereto or any other form approved by Collateral Agent.

"Permits" shall mean, to the extent permitted to be assigned by the terms thereof or by applicable law, all licenses, permits, rights, orders, variances, franchises or authorizations (including certificates of need) of or from any governmental authority or agency.

"Permitted Liens" shall mean Liens which are permitted by the Secured Debt Agreements.

"Pledged Interests" shall mean, collectively, the Initial Pledged Interests and the Additional Pledged Interests; provided, however, that the "Pledged Interests" shall not include the voting stock of any Subsidiary of any Assignor which is a first-tier controlled foreign corporation (as defined in Section 957(a) of the Code) representing in excess of 65% of the total voting power of all outstanding voting stock of such Subsidiary. For purposes of the foregoing, "voting stock" shall mean "stock entitled to vote" within the meaning of Treasury Regulation Section 1.956-2(c)(2).

"Pledged Securities" shall mean, collectively, the Pledged Interests, the Pledged Shares and the Successor Interests.

"Pledged Shares" shall mean, collectively, the Initial Pledged Shares and the Additional Pledged Shares; provided, however, that "Pledged Shares" shall not include any voting stock of any Subsidiary of any Assignor which is a first-tier controlled foreign corporation (as defined in Section 957(a) of the Code) representing in excess of 65% of the total voting power of all outstanding voting stock of such Subsidiary. For purposes of the foregoing, "voting stock" shall mean "stock entitled to vote" within the meaning of Treasury Regulation Section 1.956-2(c)(2).

"Proceeds" shall have the meaning provided in the Uniform Commercial Code as in effect in the State of New York on the date hereof or under other relevant law and, in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, indemnity,

warranty or guaranty payable to the Collateral Agent or any Assignor from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to any Assignor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any person acting under color of governmental authority) and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Registered Organization" shall have the meaning provided in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Required Secured Creditors" shall mean (i) at all times prior to the occurrence of the Credit Document Obligations Termination Date, the Majority LC Facility Lenders (or, to the extent required by the Credit Agreement, each of the LC Facility Lenders), (ii) at all times on and after the Credit Document Obligations Termination Date, the Senior Second Lien Notes Indenture Trustee acting in accordance with the provisions of the Senior Second Lien Notes Indenture (with the consent of the holders of the requisite percentage of the then outstanding Senior Second Lien Notes Obligations (to the extent such consent is required by the terms of the Senior Second Lien Notes Indenture)).

"Requisite Creditors" shall have the meaning provided in Section 10.2 of this Agreement.

"Rolling Stock" shall mean all trucks, trailers, tractors, service vehicles, automobiles and other registered mobile equipment.

"Second Lien Excluded Collateral" shall mean and include (i) all assets of the Assignors located outside of the United States; (ii) all Capital Stock, notes, instruments, other equity interests and other securities owned or held by the Assignors in any Subsidiary of Parent; and (ii) all Proceeds and products from any and all of the foregoing excluded collateral described in clause (i) and (ii) above.

"Secured Creditors" shall mean, collectively, the Bank Creditors and the Senior Second Lien Notes Creditors.

"Secured Debt Agreements" shall mean and include (i) this Agreement, (ii) the Credit Agreement and the other Credit Documents and (iii) the Senior Second Lien Notes Documents.

"Securities Account" shall mean any "securities account" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Securities Collateral" shall mean, collectively, the Pledged Securities, the Intercompany Notes and the Distributions.

"Securities Intermediary" shall mean any "securities intermediary" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Security Documents" shall mean, collectively, the Security Documents, as such term is defined in the Credit Agreement, and the Security Documents, as such term is defined in the Indenture.

"Senior Second Lien Noteholders" shall have the meaning provided in the recitals to this Agreement.

"Senior Second Lien Notes" shall have the meaning provided in the recitals of this Agreement.

"Senior Second Lien Notes Creditors" shall mean the Senior Second Lien Notes Indenture Trustee and the Senior Second Lien Noteholders.

"Senior Second Lien Notes Documents" shall mean the Senior Second Lien Notes, the Senior Second Lien Notes Indenture and the other documents and instruments executed and delivered with respect to the Senior Second Lien Notes or the Senior Second Lien Notes Indenture, in each case as in effect on the date hereof and as the same may be amended, modified and/or supplemented time to time in accordance with the terms thereof and of the Credit Agreement.

"Senior Second Lien Notes Obligations" shall mean the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), liabilities and indebtedness (including, without limitation, indemnities, fees and expenses of the Senior Second Lien Notes Indenture Trustee and all interest thereon and all interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of any Assignor at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such case, proceeding or other action) of such Assignor owing to the Senior Second Lien Notes Creditors, whether now existing or hereafter incurred under, arising out of or in connection with each Senior Second Lien Notes Document to which such Assignor is a party (including, in the case of each Assignor that provides a guaranty in respect of the Senior Second Lien Notes, all such obligations, indebtedness and liabilities under such guaranty) and the due performance and compliance by each Assignor with all of the terms, conditions and agreements contained in each such Senior Second Lien Notes Document.

"Software" shall mean "software" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Successor Interests" shall mean, collectively, with respect to each Assignor, all shares of each class of the capital stock of the successor corporation or interests or certificates of the successor limited liability company, partnership or other entity owned by such Assignor (unless such successor is such Assignor itself) formed by or resulting from any consolidation or merger in which any issuer of Pledged Shares or Pledged Interests is not the surviving entity; provided, however, that the "Successor Interests" shall not include the voting stock of any Subsidiary which is a first-tier controlled foreign corporation (as defined in Section 957(a) of the Code) representing in excess of 65% of the total voting power of all outstanding voting stock of

such Subsidiary. For purposes of the foregoing, "voting stock" shall mean "stock entitled to vote" within the meaning of Treasury Regulation Section 1.956-2(c)(2).

"Supporting Obligations" shall mean any "supporting obligation" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York, now or hereafter owned by any Assignor, or in which any Assignor has any rights, and, in any event, shall include, but shall not be limited to all of such Assignor's rights in any Letter-of Credit Right or secondary obligation that supports the payment or performance of, and all security for, any Chattel Paper, Document, General Intangible, Instrument or Investment Property.

"Tangible Chattel Paper" shall mean "tangible chattel paper" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Termination Date" shall have the meaning provided in Section 10.8 of this Agreement.

"Timber-to-be-Cut" shall mean "timber-to-be-cut" as such term is used in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Title Insurance Policies" shall mean, collectively, the Title Insurance Policies, as such term is defined in the Credit Agreement, and the Title Insurance Policies, as such term is defined in the Indenture.

"Trade Secret Rights" shall mean the rights of an Assignor in any Trade Secrets it holds or owns.

"Trade Secrets" shall mean any secretly held existing engineering and other data, information, production procedures and other know-how relating to the design, manufacture, assembly, installation, use, operation, marketing, sale and servicing of any products or business of an Assignor worldwide, whether written or not written.

"Transmitting Utility" shall have the meaning given such term in Section 9-02(a)(80) of the Uniform Commercial Code as in effect on the date hereof in the State of New York.

"Trust Indenture Act" shall mean the Trust Indenture Act of 1939, as amended, and the rules and regulations promulgated thereunder from time to time.

"Trustee Obligations" shall mean in the event of any proceeding for the collection or enforcement of any indebtedness, obligations or liabilities of any Assignor in respect of the Senior Second Lien Note Obligations after an Event of Default shall have occurred and be continuing, the indemnities, fees and expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, or of any exercise by the Senior Second Lien Notes Indenture Trustee of its rights, powers or duties under the Senior Second Lien Note Documents, together with reasonable attorneys' fees and court costs.

ARTICLE X

MISCELLANEOUS

10.1 Notices. Except as otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been duly given or made when delivered to the party to which such notice, request, demand or other communication is required or permitted to be given or made under this Agreement, addressed:

(a) if to any Assignor, to it:

c/o Clean Harbors, Inc.
1501 Washington Street
Braintree, MA 02184
Attention: Chief Financial Officer
Telephone No.: (617) 849-1800
Telecopy No.: (617) 848-1632

with a copy to:

Davis Malm & D'Agostine, P.C.
One Boston Place
Boston, MA 02108-4470
Attention: C. Michael Malm, Esq.
Telephone No.: 617-367-2500
Telecopy No.: 617-523-6215

(b) if to the Collateral Agent:

Credit Suisse First Boston
One Madison Avenue
New York, NY 10010
CSFB Loan Services Group, Attention: Carolyn Tee
Telephone No.: (212) 325-9936
Telecopy No.: (212) 325-8304

with a copy to:

Cahill Gordon & Reindel LLP
80 Pine Street
New York, NY 10005
Attention: Susanna M. Suh, Esq.
Telephone No.: 212-701-3000
Telecopy No.: 212-269-5420

(c) if to any Bank Creditor (other than the Collateral Agent), at such address as such Bank Creditor shall have specified in the Credit Agreement; and

(d) if to any other Secured Creditor, (x) to the Authorized Representative for such Secured Creditor or (y) if there is no such Authorized Representative, at such address as such Secured Creditor shall have specified in writing to the Borrower and the Collateral Agent; or at such other address as shall have been furnished in writing by any Person described above to the party required to give notice hereunder.

10.2 Waiver; Amendment; Notice of Acceleration. None of the terms and conditions of this Agreement or any other Security Document may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by each Assignor directly and adversely affected thereby and the Collateral Agent (with the consent of the Required Secured Creditors); provided, that (i) additional Assignors may be added as parties hereto from time to time in accordance with Section 10.13 hereof without the consent of any other Assignor or of the Secured Creditors, and (ii) any change, waiver, modification or variance materially and adversely affecting the rights and benefits of the Senior Second Lien Notes Creditors and not all Secured Creditors in a like or similar manner shall require the written consent of the Requisite Creditors of the Senior Second Lien Notes Creditors as holders of the Senior Second Lien Notes Obligations; provided further, however, that notwithstanding anything to the contrary provided in clause (ii) of the immediately preceding proviso, (x) the Required Secured Creditors may agree to modifications to this Agreement or any other Security Document and, to the extent so agreed, the Collateral Agent shall implement such modifications, for the purpose, among other things, of securing additional extensions of credit (including, without limitation, pursuant to the Credit Agreement or any refinancing or extension thereof) and adding new creditors as "Secured Creditors" hereunder and thereunder and such changes shall not require the written consent of the Senior Second Lien Notes Creditors, so long as such extensions (and resulting addition) do not otherwise give rise to an express violation of the terms of the Senior Second Lien Notes Documents, (y) such clause (ii) shall not apply to any release of Collateral of any Assignor (or the termination of this Agreement or any other Security Document) effected in accordance with the requirements of Section 10.8 of this Agreement or the comparable provisions of the other Security Documents, as the case may be, and (z) any amendment, change, waiver, modification or variance to the extent relating to any Second Lien Excluded Collateral may be made without the prior consent of the Senior Second Lien Notes Creditors. For the purpose of this Agreement and the other Security Documents, the term "Class" shall mean each class of Secured Creditors with outstanding Obligations secured hereby at such time, i.e., whether the Bank Creditors as holders of the First Lien Obligations or the Senior Second Lien Notes Creditors as holders of the Senior Second Lien Notes Obligations. For the purpose of this Agreement and the other Security Documents, the term "Requisite Creditors" of any Class shall mean each of (x) with respect to the First Lien Obligations, the Majority LC Facility Lenders (or all LC Facility Lenders if required pursuant to the Credit Agreement) and (y) with respect to the Senior Second Lien Notes Obligations, the Senior Second Lien Notes Indenture Trustee acting at the direction of the requisite percentage of the holders of the Senior Second Lien Notes Obligations outstanding from time to time (to the extent such direction is required by the terms of the Senior Second Lien Notes Indenture). Notwithstanding anything to the contrary provided in this Agreement, to facilitate the extension of additional permitted secured debt or the permitted refinancing of existing

secured debt, the Collateral Agent shall enter into intercreditor, subordination or acknowledgment agreements (which agreements may specify, among other things, (i) that the other permitted secured debt may be secured by the Collateral and be entitled to the benefits of the Security Documents, (ii) the relative priority of the Lien in the Collateral securing such other permitted secured debt, (iii) that the holder of such other permitted secured debt shall be entitled to the same rights and remedies, including rights of foreclosure and voting rights, as the holders of the secured debt being refinanced, (iv) the appointment of a successor Collateral Agent in accordance with Annex D hereto and (v) such other matters as are reasonably requested by the Assignors as may be necessary or desirable to enable the Assignors to receive the practical benefit of the provisions contained in the Credit Documents and in the Senior Second Lien Notes Indenture regarding the ability of the Assignors to incur other Indebtedness secured by a Lien in the Collateral) and/or take such other actions that may be reasonably requested by any Assignor, in connection with securing additional extensions of credit without the consent of the Requisite Creditors of the various Classes, so long as (x) such extensions (and resulting addition) or refinancings which give rise to the need for such intercreditor, subordination or acknowledgment agreements do not otherwise give rise to an express violation of the terms of the Credit Agreement or the Second Lien Notes Documents, (y) such intercreditor, subordination and/or acknowledgment agreements are reasonably required to effect the securing of additional extensions or refinancings of credit and (z) the terms and conditions of such intercreditor, subordination and acknowledgment agreements, as the case may be, are reasonably satisfactory to the Collateral Agent.

10.3 Obligations Absolute. The obligations of each Assignor hereunder shall remain in full force and effect without regard to, and shall not be impaired by, (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of such Assignor; (b) any exercise or non-exercise, or any waiver of, any right, remedy, power or privilege under or in respect of this Agreement or any other Secured Debt Agreement; (c) any renewal, extension, amendment or modification of or addition or supplement to or deletion from any Secured Debt Agreement or any security for any of the Obligations; (d) any waiver, consent, extension, indulgence or other action or inaction under or in respect of any such agreement or instrument including, without limitation, this Agreement; (e) any furnishing of any additional security to the Collateral Agent or its assignee or any acceptance thereof or any release of any security by the Collateral Agent or its assignee; or (f) any limitation on any party's liability or obligations under any such instrument or agreement or any invalidity or unenforceability, in whole or in part, of any such instrument or agreement or any term thereof; whether or not any Assignor shall have notice or knowledge of any of the foregoing. The rights and remedies of the Collateral Agent herein provided are cumulative and not exclusive of any rights or remedies which the Collateral Agent would otherwise have.

10.4 Successors and Assigns. This Agreement shall be binding upon each Assignor and its successors and assigns and shall inure to the benefit of the Collateral Agent, the other Secured Creditors and their respective successors and assigns; provided, that, except as otherwise permitted by the Secured Debt Agreements, no Assignor may transfer or assign any or all of its rights or obligations hereunder without the prior written consent of the Collateral Agent (with the consent of the Required Secured Creditors). Any Person that becomes a Secured Creditor after the date hereof by its acceptance of any Note, any Senior Second Lien Note or the

benefits of this Agreement or any other Security Document, as the case may be, shall be bound by the terms hereof and thereof; it being understood that no Senior Second Lien Noteholder shall have any right to give any direction to the Collateral Agent with respect to any Collateral or take any action or exercise any right of a Secured Creditor under this Agreement or any other Security Documents, with all such directions, actions or rights to be given, taken or exercised, as the case may be, by the Senior Second Lien Notes Indenture Trustee, acting for the benefit of the holders of the Senior Second Lien Notes Obligations, provided that nothing contained in the preceding clause shall be construed to limit the agreements set forth in the last sentence of Section 7.1 hereof. All agreements, statements, representations and warranties made by each Assignor herein or in any certificate or other instrument delivered by such Assignor or on its behalf under this Agreement shall be considered to have been relied upon by the Secured Creditors and shall survive the execution and delivery of this Agreement and each other Secured Debt Agreement regardless of any investigation made by the Secured Creditors or on their behalf.

10.5 Headings Descriptive. The headings of the several sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

10.6 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE ASSIGNORS AND SECURED CREDITORS HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK. EACH ASSIGNOR AND EACH SECURED CREDITOR IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER SECURITY DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

10.7 Assignor's Duties. It is expressly agreed, anything herein contained to the contrary notwithstanding, that each Assignor shall remain liable to perform all of the obligations, if any, assumed by it with respect to the Collateral and neither the Collateral Agent nor any other Secured Creditor shall have any obligations or liabilities with respect to any Collateral by reason of or arising out of this Agreement, nor shall the Collateral Agent or any other Secured Creditor be required or obligated in any manner to perform or fulfill any of the obligations of any Assignor under or with respect to any Collateral.

10.8 Termination; Release. (a) After the Termination Date, this Agreement shall terminate (provided that all indemnities set forth herein including, without limitation, in Section 8.1 hereof and in Section 6 of Annex D hereto shall survive such termination) and the Collateral Agent, at the request and expense of the relevant Assignor, will execute and deliver to such Assignor a proper instrument or instruments (including Uniform Commercial Code termination statements on form UCC-3) acknowledging the satisfaction and termination of this Agreement, and will duly assign, transfer and deliver to such Assignor (without recourse and without any representation or warranty) such of the Collateral as may be in the possession of the Collateral Agent and as has not theretofore been sold or otherwise applied or released pursuant to this Agreement. As used in this Agreement, "Termination Date" shall mean the date upon which (i) the First Lien Obligations Termination Date shall have then (or theretofore) occurred and (ii)

all Senior Second Lien Notes Obligations (other than those arising from indemnities for which no claim has been made) then owing have been paid in full (or been defeased in accordance with the terms of the Senior Second Lien Notes Indenture).

(b) In the event that any part of the Collateral is sold or otherwise disposed of (to a Person other than an Assignor) (x) at any time prior to the First Lien Obligations Termination Date, in connection with a sale or other disposition permitted by the Credit Agreement or is otherwise released at the direction of the Required Secured Creditors or (y) at any time thereafter, in connection with a sale or other disposition permitted by the other Secured Debt Agreements or is otherwise released at the direction of the Required Secured Creditors, and the proceeds of any such sale or disposition or other release are applied in accordance with the terms of the Credit Agreement or such other Secured Debt Agreement, as the case may be, to the extent required to be so applied, such Collateral will be sold, disposed of or released free and clear of the Liens created by this Agreement and the Collateral Agent, at the request and expense of such Assignor, will (i) duly assign, transfer and deliver to such Assignor (without recourse and without any representation or warranty) such of the Collateral as is then being (or has been) so sold, disposed of or released and as may be in the possession of the Collateral Agent and has not theretofore been released pursuant to this Agreement and/or (ii) execute such releases and discharges in respect of such Collateral as is then being (or has been) so sold, disposed of or released as such Assignor may reasonably request. Notwithstanding the foregoing, prior to the First Lien Obligations Termination Date, any release of any Liens on the Collateral authorized pursuant to the terms of any Credit Document shall be binding upon the Senior Second Lien Notes Creditors; provided, however, that no release of the Senior Second Lien Notes Creditors' Liens on the Collateral under this Section 10.08(b) shall be made without the consent of the required percentage of holders of the Senior Second Lien Notes in accordance with the Senior Second Lien Notes Indenture if (i) (a) the Collateral to be released is not the subject of a sale or other disposition and (b) such release is being made in connection with or in contemplation of the repayment in full of the First Lien Obligations or (ii) such release is a release of all or substantially all of the Collateral in connection with a transaction that is not expressly permitted by this Agreement (including Section 7 hereof) or the Senior Second Lien Note Documents.

(c) At any time that the respective Assignor desires that Collateral be released as provided in the foregoing Section 10.8(a) or (b), such Assignor shall deliver to the Collateral Agent a certificate signed by an Authorized Officer of such Assignor stating that the release of the respective Collateral is permitted pursuant to Section 10.8(a) or (b) hereof.

(d) The Collateral Agent shall have no liability whatsoever to any other Secured Creditor as the result of any release of Collateral by it in accordance with (or which the Collateral Agent in the absence of gross negligence or willful misconduct believes to be in accordance with) this Section 10.8.

(e) Without limiting the foregoing provisions of this Section 10.8, to the extent applicable following the qualification of the Senior Second Lien Notes Indenture under the Trust Indenture Act (but only insofar as this Agreement applies to the Senior Second Lien Notes Creditors) (i) the Assignors shall comply with Section 314(d) of the Trust Indenture Act in connection with the release of property or Liens hereunder and (ii) the parties hereto agree that if

any amendments to this Agreement or any other Security Documents are required in order to comply with the provisions of the Trust Indenture Act, such parties shall cooperate and act in good faith to effect such amendments as promptly as practicable.

10.9 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A set of counterparts executed by all the parties hereto shall be lodged with the Borrower and the Collateral Agent.

10.10 The Collateral Agent; Secured Creditor Acknowledgments . (a) The Collateral Agent will hold in accordance with this Agreement all items of the Collateral at any time received under this Agreement. It is expressly understood and agreed that the obligations of the Collateral Agent as holder of the Collateral and interests therein and with respect to the disposition thereof, and otherwise under this Agreement, are only those expressly set forth in this Agreement and Annex D hereto. The Collateral Agent shall act hereunder on the terms and conditions set forth in Section 12 of the Credit Agreement and in Annex D hereto, the terms of which shall be deemed incorporated herein by reference as fully as if the same were set forth herein in their entirety. In the event that any provision set forth in Section 12 of the Credit Agreement in respect of the Collateral Agent conflicts with any provision set forth in Annex D hereto, the provisions of Annex D hereto shall govern (except that the LC Facility Lenders shall remain obligated to indemnify the Collateral Agent pursuant to Section 13 of the Credit Agreement, to the extent the Collateral Agent is not indemnified by Secured Creditors pursuant to such Annex D).

(b) In addition to the provisions of clause (a) of this Section 10.10 and the other provisions of this Agreement and the other Security Documents, the Secured Creditors (by their acceptance of the benefits of this Agreement and the other Security Documents) also expressly acknowledge and agree to the other provisions of Annex D hereto.

10.11 Severability. Any provision of this Agreement which 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 hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.12 Limited Obligations. (a) It is the desire and intent of each Assignor and the Secured Creditors that this Agreement shall be enforced against each Assignor to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Notwithstanding anything to the contrary contained herein, in furtherance of the foregoing, it is noted that as to each Assignor that is a Subsidiary of the Borrower and which has executed a guaranty of any of the Obligations pursuant to a Secured Debt Agreement, the obligations of such Assignor thereunder are limited to the extent provided therein.

(b) To the extent not otherwise provided in a guaranty given by an Assignor in respect of the Senior Second Lien Notes Obligations, each Assignor (collectively, the "second lien assignors"), the Senior Second Lien Notes Indenture Trustee and each other Senior Second

Lien Notes Creditor hereby confirm that it is the intention of all such Persons that the grant of the security interest hereunder by the second lien assignors with respect to the Senior Second Lien Notes Obligations and the Senior Second Lien Notes Obligations of each such second lien assignor hereunder does not constitute a fraudulent transfer or conveyance for purposes of any bankruptcy law (as hereinafter defined), the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Agreement and the Senior Second Lien Notes Obligations of the second lien assignors hereunder. To effectuate the foregoing intention, the Senior Second Lien Notes Indenture Trustee, the other Senior Second Lien Notes Creditors and the second lien assignors hereby irrevocably agree that the Senior Second Lien Notes Obligations of the second lien assignors hereunder at any time shall be limited to the maximum amount (after taking into account any guaranty of the First Lien Obligations by the second lien assignors) as will result in the Senior Second Lien Notes Obligations of the second lien assignors hereunder not constituting a fraudulent transfer or conveyance. For purposes hereof, "bankruptcy law" means any proceeding of the type referred to in Section 6.01(h) or (i) of the Senior Second Lien Notes Indenture or Title 11, U.S. Code, or any similar foreign, federal or state law for the relief of debtors.

10.13 Additional Assignors. It is understood and agreed that any Subsidiary of the Borrower that is required to become a party to this Agreement after the date hereof pursuant to the requirements of the Credit Agreement or the Senior Second Lien Notes Indenture shall become an Assignor hereunder by (x) executing a counterpart hereof and/or an assumption agreement, in each case in form and substance satisfactory to the Collateral Agent, (y) delivering a Perfection Certificate Supplement to the Perfection Certificate so as to cause such Perfection Certificate to be complete and accurate with respect to such additional Assignor on such date and (z) taking all actions as specified in this Agreement, the Credit Agreement and the Senior Second Lien Notes Indenture, in each case with all documents required above to be delivered to the Collateral Agent and with all documents and action required above to be taken to the reasonable satisfaction of the Collateral Agent.

10.14 No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the parties hereto and their respective successors and assigns and for the benefit of the Secured Creditors from time to time and their respective successors and assigns and, except for the Secured Creditors and their successors and assigns, there shall be no third party beneficiaries hereof, nor shall any Person other than the parties hereto and their respective successors and assigns, and the Secured Creditors and their respective successors and assigns, be entitled to enforce the provisions hereof or have any claims against any party hereto (or any Secured Creditor) or their successors and assigns arising from, or under, this Agreement.

10.15 Trustee's Disclaimer. Notwithstanding any term herein to the contrary, it is hereby expressly agreed and acknowledged that the agreements set forth herein by the Senior Second Lien Notes Indenture Trustee are made solely in its capacity as Trustee under the Indenture and with respect to the Securities (and not in its individual corporate capacity). The Senior Second Lien Notes Indenture Trustee shall not have any duties, obligations or responsibilities under this Agreement except as expressly set forth herein, and shall have no responsibility or liability for the sufficiency, acceptability, validity or enforceability of any of the terms hereof. Nothing in this Agreement shall be construed to operate as a waiver by the Senior Second Lien

Notes Indenture Trustee, with respect to the Assignors, of the benefit of any exculpatory provisions, presumptions, indemnities, or reliance rights contained in the Indenture, and the Assignors expressly agree that as between themselves and the Senior Second Lien Notes Indenture Trustee, the Senior Second Lien Notes Indenture Trustee shall have such benefit with respect to all actions or omissions by the Senior Second Lien Notes Indenture Trustee pursuant to this Agreement. For all purposes of this Agreement, the Senior Second Lien Notes Indenture Trustee may (a) rely in good faith, as to matters of fact, on any representation of fact believed by the Senior Second Lien Notes Indenture Trustee to be true (without any duty of investigation) and that is contained in a written certificate of any authorized representative of the Assignors, or of the Collateral Agent, (b) rely in good faith, as to matters of law, on any advice received from its legal counsel, and shall have no liability for any action or omission taken in reliance thereon, and (c) assume in good faith (without any duty or investigation), and rely upon, the genuineness, due authority, validity and accuracy of any certificate, instrument, notice, or other document believed by it in good faith to be genuine and presented by the proper person. Nothing in this Agreement shall be construed to limit or foreclose claims of, or payments to, U.S. Bank National Association in its capacity as Trustee under the Indenture with respect to any fees, expenses, costs or indemnities owing to it pursuant to the Indenture arising from or in connection with its service as Trustee thereunder.

* * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

CLEAN HARBORS, INC. ALTAIR DISPOSAL SERVICES, LLC
BATON ROUGE DISPOSAL SERVICES, LLC
BRIDGEPORT DISPOSAL, LLC
CH INTERNATIONAL HOLDINGS, INC.
CLEAN HARBORS ANDOVER, LLC
CLEAN HARBORS ANTIOCH, LLC
CLEAN HARBORS ARAGONITE, LLC
CLEAN HARBORS ARIZONA, LLC
CLEAN HARBORS OF BALTIMORE, INC.
CLEAN HARBORS BATON ROUGE, LLC
CLEAN HARBORS BDT, LLC
CLEAN HARBORS BUTTONWILLOW, LLC
CLEAN HARBORS CHATTANOOGA, LLC
CLEAN HARBORS COFFEVILLE, LLC
CLEAN HARBORS COLFAX, LLC
CLEAN HARBORS DEER PARK, L.P.
CLEAN HARBORS DEER TRAIL, LLC
CLEAN HARBORS DISPOSAL SERVICES, INC.
CLEAN HARBORS FINANCIAL SERVICES COMPANY
CLEAN HARBORS FLORIDA, LLC
CLEAN HARBORS GRASSY MOUNTAIN, LLC
CLEAN HARBORS KANSAS, LLC
CLEAN HARBORS LAPORTE, L.P.
CLEAN HARBORS LAUREL, LLC
CLEAN HARBORS LONE MOUNTAIN, LLC
CLEAN HARBORS LONE STAR CORP.
CLEAN HARBORS LOS ANGELES, LLC
CLEAN HARBORS (MEXICO), INC.
CLEAN HARBORS OF TEXAS, LLC
CLEAN HARBORS PECATONICA, LLC
CLEAN HARBORS PLAQUEMINE, LLC
CLEAN HARBORS PPM, LLC
CLEAN HARBORS REIDSVILLE, LLC
CLEAN HARBORS SAN JOSE, LLC
CLEAN HARBORS TENNESSEE, LLC
CLEAN HARBORS WESTMORLAND, LLC
CLEAN HARBORS WHITE CASTLE, LLC
CROWLEY DISPOSAL, LLC
DISPOSAL PROPERTIES, LLC
GSX DISPOSAL, LLC

HARBOR MANAGEMENT CONSULTANTS, INC.
HARBOR INDUSTRIAL SERVICES TEXAS, L.P.
HILLIARD DISPOSAL, LLC
NORTHEAST CASUALTY REAL PROPERTY, LLC
ROEBUCK DISPOSAL, LLC
SAWYER DISPOSAL SERVICES, LLC
SERVICE CHEMICAL, LLC
TULSA DISPOSAL, LLC
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC
CLEAN HARBORS OF BRAINTREE, INC.
CLEAN HARBORS OF NATICK, INC.
CLEAN HARBORS SERVICES, INC.
MURPHY'S WASTE OIL SERVICE INC.
CLEAN HARBORS KINGSTON FACILITY CORPORATION
CLEAN HARBORS OF CONNECTICUT, INC.
SPRING GROVE RESOURCE RECOVERY, INC.,

as Assignors

By: /S/ STEPHEN MOYNIHAN
Name: STEPHEN MOYNIHAN
Title: SENIOR VICE PRESIDENT

CREDIT SUISSE FIRST BOSTON,
acting through its Cayman Islands Branch,
as Collateral Agent, as Assignee, and as
LC Facility Administrative Agent

By: /S/ JOSEPH ADIPIETRO
Name: JOSEPH ADIPIETRO
Title: DIRECTOR

By: /S/ CASSANDRA DROOGAN
Name: CASSANDRA DROOGAN
Title: ASSOCIATE

U.S. BANK NATIONAL ASSOCIATION,
solely in its capacity as trustee under the
Senior Second Lien Notes Indenture for the
Senior Second Lien Notes Creditors

By: /s/ PETER MURPHY
Name: PETER MURPHY
Title: ASSISTANT VICE PRESIDENT

ANNEX A

Form of Copyright Security Agreement

Copyright Security Agreement, dated as of [_____], by CLEAN HARBORS, INC. (the "Pledgor"), in favor of CREDIT SUISSE FIRST BOSTON, in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the "Collateral Agent").

W I T N E S S E T H:

WHEREAS, Pledgor is party to a Security Agreement of even date herewith (the " Security Agreement") in favor of the Collateral Agent pursuant to which the Pledgor is required to execute and deliver this Copyright Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into Credit Agreement, the Pledgor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral .

(a) Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Bank Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral:

(1) Copyrights of Pledgor listed on Schedule I attached hereto; and

(2) all Proceeds of any and all of the foregoing (other than Excluded Collateral).

(b) Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Senior Second Lien Notes Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral:

(1) Copyrights of Pledgor listed on Schedule I attached hereto; and

(2) all Proceeds of any and all of the foregoing (other than Second Lien Excluded Collateral).

SECTION 3. Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Pledgor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyrights made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the full performance of the Obligations, the Collateral Agent shall execute, acknowledge and deliver to the Pledgor the proper documents and instruments acknowledging the release of the security interest in the Copyrights and Proceeds thereof under this Copyright Security Agreement.

[signature page follows]

IN WITNESS WHEREOF, Pledgor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,

CLEAN HARBORS, INC.

By: _____
Name:
Title:

Accepted and Agreed:

CREDIT SUISSE FIRST BOSTON,
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE I

to

COPYRIGHT SECURITY AGREEMENT

COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS

Copyright Registrations:

OWNER	REGISTRATION NUMBER	TITLE

Copyright Applications:

OWNER	TITLE

ANNEX B

Form of Patent Security Agreement

Patent Security Agreement, dated as of [_____], by CLEAN HARBORS, INC. (the "Pledgor"), in favor of CREDIT SUISSE FIRST BOSTON, in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the "Collateral Agent").

W I T N E S S E T H:

WHEREAS, Pledgor is party to a Security Agreement of even date herewith (the " Security Agreement") in favor of the Collateral Agent pursuant to which the Pledgor is required to execute and deliver this Patent Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into Credit Agreement, the Pledgor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral .

(a) Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Bank Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral:

(1) Patents of Pledgor listed on Schedule I attached hereto; and

(2) all Proceeds of any and all of the foregoing (other than Excluded Collateral).

(b) Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Senior Second Lien Notes Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral:

(1) Patents of Pledgor listed on Schedule I attached hereto; and

(2) all Proceeds of any and all of the foregoing (other than Second Lien Excluded Collateral).

SECTION 3. Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Pledgor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Patents made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the full performance of the Obligations, the Collateral Agent shall execute, acknowledge and deliver to the Pledgor the proper documents and instruments acknowledging the release of the security interest in the Patents and Proceeds thereof under this Patent Security Agreement.

[signature page follows]

IN WITNESS WHEREOF, Pledgor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,

CLEAN HARBORS, INC.

By: _____
Name:
Title:

Accepted and Agreed:

CREDIT SUISSE FIRST BOSTON,
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE I

to

PATENT SECURITY AGREEMENT

PATENT REGISTRATIONS AND PATENT APPLICATIONS

Patent Registrations:

OWNER	REGISTRATION NUMBER	NAME

Patent Applications:

OWNER	APPLICATION NUMBER	NAME

ANNEX C

Form of Trademark Security Agreement

Trademark Security Agreement, dated as of June 30, 2004, by CLEAN HARBORS, INC. (the "Borrower"), CLEAN HARBORS ENVIRONMENTAL SERVICES, INC. and HARBOR MANAGEMENT CONSULTANTS, INC. (each, a "Pledgor", and together with the Borrower, the "Pledgors"), in favor of CREDIT SUISSE FIRST BOSTON, in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the "Collateral Agent").

WITNESSETH:

WHEREAS, Pledgors are party to a Security Agreement of even date herewith (the "Security Agreement") in favor of the Collateral Agent pursuant to which the Pledgors are required to execute and deliver this Trademark Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into Credit Agreement, the Pledgors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral.

(a) Each Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Bank Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral of such Pledgor:

(1) Trademarks of such Pledgor listed on Schedule I attached hereto;

(2) all Goodwill associated with such Trademarks; and

(3) all Proceeds of any and all of the foregoing (other than Excluded Collateral).

(b) Each Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Senior Second Lien Notes Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral of such Pledgor:

(1) Trademarks of such Pledgor listed on Schedule I attached hereto;

(2) all Goodwill associated with such Trademarks; and

(3) all Proceeds of any and all of the foregoing (other than Second Lien Excluded Collateral).

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Pledgors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademarks made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the full performance of the Obligations, the Collateral Agent shall execute, acknowledge and deliver to the Pledgor the proper documents and instruments to evidence the release of the security interest in the Trademarks, Goodwill and Proceeds thereof under this Trademark Security Agreement.

[signature page follows]

IN WITNESS WHEREOF, each Pledgor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,

CLEAN HARBORS, INC.

By: _____
Name:
Title:

CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.

By: _____
Name:
Title:

HARBOR MANAGEMENT CONSULTANTS, INC.

By: _____
Name:
Title:

Accepted and Agreed:

CREDIT SUISSE FIRST BOSTON,
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

Annex A

Copyright Security Agreement

Copyright Security Agreement, dated as of June 30, 2004, by CLEAN HARBORS, INC. (the "Pledgor"), in favor of CREDIT SUISSE FIRST BOSTON, in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the "Collateral Agent").

WITNESSETH:

WHEREAS, Pledgor is party to a Security Agreement of even date herewith (the "Security Agreement") in favor of the Collateral Agent pursuant to which the Pledgor is required to execute and deliver this Copyright Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into Credit Agreement, the Pledgor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral.

(a) Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Bank Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral:

(1) Copyrights of Pledgor listed on Schedule I attached hereto; and

(2) all Proceeds of any and all of the foregoing (other than Excluded Collateral).

(b) Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Senior Second Lien Notes Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral:

(1) Copyrights of Pledgor listed on Schedule I attached hereto; and

(2) all Proceeds of any and all of the foregoing (other than Second Lien Excluded Collateral).

SECTION 3. Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Pledgor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyrights made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the full performance of the Obligations, the Collateral Agent shall execute, acknowledge and deliver to the Pledgor the proper documents and instruments acknowledging the release of the security interest in the Copyrights and Proceeds thereof under this Copyright Security Agreement.

[signature page follows]

IN WITNESS WHEREOF, Pledgor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,

CLEAN HARBORS, INC.

By: _____
Name:
Title:

Accepted and Agreed:

CREDIT SUISSE FIRST BOSTON,
Acting through its Cayman Islands branch
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE I
to
COPYRIGHT SECURITY AGREEMENT
COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS

Copyright Registrations:

OWNER	REGISTRATION NUMBER	TITLE
Clean Harbors, Inc.	Txu7479	Rollins Environmental Services Waste Material Data Sheet

Copyright Applications:

OWNER	TITLE

Annex B

Patent Security Agreement

Patent Security Agreement, dated as of June 30, 2004, by CLEAN HARBORS, INC. (the "Pledgor"), in favor of CREDIT SUISSE FIRST BOSTON, in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the "Collateral Agent").

W I T N E S S E T H:

WHEREAS, Pledgor is party to a Security Agreement of even date herewith (the "Security Agreement") in favor of the Collateral Agent pursuant to which the Pledgor is required to execute and deliver this Patent Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into Credit Agreement, the Pledgor hereby agrees with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral.

(a) Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Bank Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral:

(1) Patents of Pledgor listed on Schedule I attached hereto; and

(2) all Proceeds of any and all of the foregoing (other than Excluded Collateral).

(b) Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Senior Second Lien Notes Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral:

(1) Patents of Pledgor listed on Schedule I attached hereto; and

(2) all Proceeds of any and all of the foregoing (other than Second Lien Excluded Collateral).

SECTION 3. Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Pledgor hereby acknowledges and affirms that the rights and remedies of the Collateral Agent with respect to the security interest in the Patents made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the full performance of the Obligations, the Collateral Agent shall execute, acknowledge and deliver to the Pledgor the proper documents and instruments acknowledging the release of the security interest in the Patents and Proceeds thereof under this Patent Security Agreement.

[signature page follows]

IN WITNESS WHEREOF, Pledgor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,

CLEAN HARBORS, INC.

By: _____
Name:
Title:

Accepted and Agreed:

CREDIT SUISSE FIRST BOSTON,
acting through its Cayman Islands branch
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE I
to
PATENT SECURITY AGREEMENT
PATENT REGISTRATIONS AND PATENT APPLICATIONS

Patent Registrations:

OWNER	REGISTRATION NUMBER	NAME
Clean Harbors, Inc.	5,221,480	Method and Apparatus to Detoxify Aqueous Based Hazardous Waste
Clean Harbors, Inc.	5,312,549	Method and Apparatus for Extracting Organic Liquids from an Organic Liquid Solute/Solvent Mixture
Clean Harbors, Inc.	5,009,266	Method for In Situ Contaminant Extractions from Soil
Clean Harbors, Inc.	4,253,824 & 4,448,138	Incinerating Kiln Devices and Methods of Protecting the Same [1]

Patent Applications:

OWNER	APPLICATION NUMBER	NAME

[1] Clean Harbors, Inc. has the right to use this patent by virtue of an assignment by Escova [need full legal name]

Annex C

Trademark Security Agreement

Trademark Security Agreement, dated as of June 30, 2004, by CLEAN HARBORS, INC. (the " Borrower"), CLEAN HARBORS ENVIRONMENTAL SERVICES, INC. and HARBOR MANAGEMENT CONSULTANTS, INC. (each, a "Pledgor", and together with the Borrower, the "Pledgors"), in favor of CREDIT SUISSE FIRST BOSTON, in its capacity as collateral agent pursuant to the Credit Agreement (in such capacity, the "Collateral Agent").

W I T N E S S E T H:

WHEREAS, Pledgors are party to a Security Agreement of even date herewith (the " Security Agreement") in favor of the Collateral Agent pursuant to which the Pledgors are required to execute and deliver this Trademark Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the benefit of the Secured Parties, to enter into Credit Agreement, the Pledgors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral.

(a) Each Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Bank Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral of such Pledgor:

(1) Trademarks of such Pledgor listed on Schedule I attached hereto;

(2) all Goodwill associated with such Trademarks; and

(3) all Proceeds of any and all of the foregoing (other than Excluded Collateral).

(b) Each Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Senior Second Lien Notes Creditors a lien on and security interest in and to all of its right, title and interest in, to and under all the following Collateral of such Pledgor:

(1) Trademarks of such Pledgor listed on Schedule I attached hereto;

(2) all Goodwill associated with such Trademarks; and

(3) all Proceeds of any and all of the foregoing (other than Second Lien Excluded Collateral).

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Pledgors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademarks made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the full performance of the Obligations, the Collateral Agent shall execute, acknowledge and deliver to the Pledgor the proper documents and instruments to evidence the release of the security interest in the Trademarks, Goodwill and Proceeds thereof under this Trademark Security Agreement.

[signature page follows]

IN WITNESS WHEREOF, each Pledgor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,

CLEAN HARBORS, INC.

By: _____
Name:
Title:

CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.

By: _____
Name:
Title:

HARBOR MANAGEMENT CONSULTANTS, INC.

By: _____
Name:
Title:

Accepted and Agreed:

CREDIT SUISSE FIRST BOSTON,
acting through its Cayman Islands branch
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE I
to
TRADEMARK SECURITY AGREEMENT
TRADEMARK REGISTRATIONS AND TRADEMARK APPLICATIONS

Trademark Registrations:

OWNER	REGISTRATION NUMBER	TRADEMARK
Clean Harbors, Inc.	1,577,006	CLEAN HARBORS
Clean Harbors, Inc.	1,578,328	CLEAN HARBORS & DESIGN
Clean Harbors, Inc.	1,894,484	EARTH ACADEMY
Clean Harbors, Inc.	1,908,234	EARTH ACADEMY & DESIGN
Clean Harbors, Inc.	2,052,342	ROLLINS ENVIRONMENTAL SERVICES
Clean Harbors, Inc.	40,922 (Mass.)	HAZ TRAC
Clean Harbors, Inc.	1,520,147	RES & DESIGN
Clean Harbors Environmental Services, Inc.	2,044,582	CLEANPACK
Clean Harbors Environmental Services, Inc.	2,226,520	CLEANFUELS & DESIGN
Clean Harbors Environmental Services, Inc.	2,155,581	CLEAN EXPRESS
Clean Harbors Environmental Services, Inc.	2,110,627	CLEANLINK
Clean Harbors Environmental Services, Inc.	2,307,897	CHOICE
Clean Harbors Environmental Services, Inc.	2,307,514	CLEANER
Clean Harbors Environmental Services, Inc.	1,720,761	SURECYCLE
Clean Harbors Environmental Services, Inc.	2,472,241	HIS & DESIGN
Clean Harbors Environmental Services, Inc.	2,635,958	HARBOR INDUSTRIAL SERVICES HIS & DESIGN
Clean Harbors Environmental Services, Inc.	2,614,594	CUSTOMPACK
Clean Harbors Environmental Services, Inc.	2,645,326	CLEANHARBORS CLEANPACK
Harbor Management Consultants, Inc.	2,340,368	HARBOR MANAGEMENT CONSULTANTS & DESIGN

Trademark Applications:

OWNER	APPLICATION NUMBER	TRADEMARK

ANNEX D
to
SECURITY AGREEMENT

THE COLLATERAL AGENT AND
SECURED CREDITOR ACKNOWLEDGMENTS [2]

1. Appointment. The Secured Creditors, by their acceptance of the benefits of the Security Agreement to which this Annex D is attached (the " Security Agreement") hereby irrevocably designate Credit Suisse First Boston, acting through its Cayman Islands Branch (and any successor Collateral Agent) to act as specified herein, therein and in the other Security Documents. Each Secured Creditor hereby irrevocable authorizes, and each holder of any Obligation by the acceptance of such Obligation and by the acceptance of the benefits of the Security Agreement and the other Security Documents shall be deemed irrevocably to authorize, the Collateral Agent to take such action on its behalf under the provisions of the Security Documents and any instruments and agreements referred to therein and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of the Collateral Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto. The Collateral Agent may perform any of its duties hereunder or thereunder by or through its authorized agents, sub-agents or employees. The Collateral Agent, for itself and its successors and assigns, hereby accepts such appointment created hereby upon the terms and conditions specified herein.

2. Nature of Duties. (a) The Collateral Agent shall have no duties or responsibilities except those expressly set forth herein or in the respective Security Documents. The duties of the Collateral Agent shall be mechanical and administrative in nature; the Collateral Agent shall not have by reason of this Agreement, any other Credit Document or any other Secured Debt Agreement a fiduciary relationship in respect of any Secured Creditor; and nothing in this Agreement, any other Credit Document or any other Secured Debt Agreement, expressed or implied, is intended to or shall be so construed as to impose upon the Collateral Agent any obligations in respect of the Security Documents except as expressly set forth herein and therein.

(b) The Collateral Agent shall not be responsible for insuring the Collateral (which term, for purposes of this Annex D, shall include the " collateral" under all of the Security Documents) or for the payment of taxes, charges or assessments or discharging of Liens upon the collateral or otherwise as to the maintenance of the Collateral.

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[2] Unless otherwise defined herein, all capitalized terms used herein (x) and defined in the Security Agreement, are used herein as therein defined and (y) not defined in the Security Agreement, are used herein as defined in the Credit Agreement referenced in the Security Agreement.

(c) The Collateral Agent shall not be required to ascertain or inquire as to the performance by any Assignor of any of the covenants or agreements contained in any Security Document, any other Credit Document or any other Secured Debt Agreement.

(d) The Collateral Agent shall be under no obligation or duty to take any action under, or with respect to, any Security Document if taking such action (i) would subject the Collateral Agent to a tax in any jurisdiction where it is not then subject to a tax or (ii) would require the Collateral Agent to qualify to do business, or obtain any license, in any jurisdiction where it is not then so qualified or licensed or (iii) would subject the Collateral Agent to in personam jurisdiction in any locations where it is not then so subject.

(e) Notwithstanding any other provision of this Annex D, neither the Collateral Agent nor any of its officers, directors, employees, affiliates or agents shall, in its individual capacity, be personally liable for any action taken or omitted to be taken by it in accordance with, or pursuant to this Annex D of, the Security Agreement or any other Security Document, unless caused by its or their own gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

(f) Notwithstanding any other provision of any Security Document or this Annex D, the Collateral Agent shall not be responsible or liable for perfecting, or maintaining the priority of, the Liens created pursuant to the Security Documents.

3. Lack of Reliance on the Collateral Agent. Independently and without reliance upon the Collateral Agent, each Secured Creditor, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of each Assignor and its Subsidiaries in connection with the making and the continuance of the Obligations and the taking or not taking of any action in connection therewith, and (ii) its own appraisal of the creditworthiness of each Assignor and its Subsidiaries, and the Collateral Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Secured Creditor with any credit or other information with respect thereto, whether coming into its possession before the extension of any Obligations or the purchase of any Notes or Senior Second Lien Notes or at any time or times thereafter. The Collateral Agent shall not be responsible or liable in any manner whatsoever to any Secured Creditor for the correctness of any recitals, statements, information, representations or warranties herein, in the other Secured Debt Agreements or in any document, certificate or other writing delivered in connection herewith or therewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectibility, priority or sufficiency of any Security Document or the security interests granted thereunder or the financial condition of any Assignor or any Subsidiary of any Assignor or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of any Security Document or any other Secured Debt Agreement, or the financial condition of any Assignor or any Subsidiary of any Assignor, or the existence or possible existence of any Default or Event of Default (or similar term) under any Secured Debt Agreement. The Collateral Agent makes no representations as to the value or condition of the Collateral or any part thereof, or as to the title of any Assignor thereto or as to the security afforded by any Security Document.

4. Certain Rights of the Collateral Agent. (a) No Secured Creditor shall have the right to take any action with respect to (or against) any Collateral, or cause the Collateral Agent to take any action with respect to (or against) any Collateral, with only the Required Secured Creditors having the right to direct the Collateral Agent by written instruction in accordance with Section 4(d) hereof to take any such action. Except for actions required to be taken by the Collateral Agent in accordance with the respective Security Documents, if the Collateral Agent shall request instructions from the Required Secured Creditors with respect to any act or action (including failure to act) in connection with any Security Document and the Required Secured Creditors shall fail to instruct the Collateral Agent with respect to any act or action (including failure to act and refrain from acting) in connection with such Security Document, the Collateral Agent shall be entitled to refrain from such act or taking such action unless and until it shall have received express instructions from the Required Secured Creditors and to the extent requested, appropriate indemnification in respect of actions to be taken, and the Collateral Agent shall not incur liability to any Secured Creditor or any other Person by reason of so refraining. Without limiting the foregoing, (x) no Secured Creditor shall have any right of action whatsoever against the Collateral Agent as a result of the Collateral Agent acting or refraining from acting hereunder or under the Security Documents in accordance with the instructions of the Required Secured Creditors or as expressly provided in the Security Documents and (y) without limiting preceding clause (x), the Collateral Agent shall not be liable to any Secured Creditor or any other Person for any action taken or omitted to be taken by it hereunder or under the Security Documents, unless caused by its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

(b) Notwithstanding anything to the contrary contained herein (and subject to Section 2(f) of this Annex D), the Collateral Agent is authorized, but not obligated, (i) to take any action reasonably required to perfect or continue the perfection of the liens on the Collateral for the benefit of the Secured Creditors and (ii) when instructions from the Required Secured Creditors have been requested by the Collateral Agent but have not yet been received, to take any action which the Collateral Agent, in good faith, believes to be reasonably required to promote and protect the interests of the Secured Creditors in the Collateral; provided that once instructions have been received, the actions of the Collateral Agent shall be governed thereby and the Collateral Agent shall not take any further action which would be contrary thereto.

(c) Notwithstanding anything to the contrary contained herein or in any Security Document, the Collateral Agent shall not be required to take or refrain from taking, and shall have no liability to any Secured Creditor for taking or refraining from taking, any action that exposes or, in the good faith judgment of the Collateral Agent may expose, the Collateral Agent or its officers, directors, agents or employees to personal liability, unless the Collateral Agent shall be adequately indemnified as provided herein or that is, or in the good faith judgment of the Collateral Agent may be, contrary to any Security Document, any other Secured Debt Agreement or applicable law.

(d) For purposes of each Security Document, each Secured Creditor shall appoint a Person as such Secured Creditor's authorized representative (each, an "Authorized Representative") for the purpose of giving or delivering any notices or instructions thereunder. Any instructions given by the Required Secured Creditors to the Collateral Agent pursuant to the Security Documents shall be in writing signed by the Authorized Representative(s) of the various Secured Creditors comprising the Required Secured Creditors with respect to such instructions and such instructions shall certify to and for the benefit of the Collateral Agent that the Secured Creditors issuing or delivering such instructions constitute the Required Secured Creditors for purposes of this Section 4 and the instructions being delivered. The Collateral Agent shall be entitled to conclusively and absolutely rely on such instructions and certification as to the identity of the Required Secured Creditors with respect to such instructions, and the Collateral Agent shall not be required to take any action, and shall not be liable to any Secured Creditor for failing or refusing to act, pursuant to any instructions which are not given or delivered by the Authorized Representatives of various Secured Creditors comprising the Required Secured Creditors with respect to such instructions. The parties hereto acknowledge that the Authorized Representative of each of the Secured Creditors shall be (x) the Administrative Agent, in the case of the Bank Creditors and (y) the Senior Second Lien Notes Indenture Trustee, in the case of the Senior Second Lien Notes Creditors.

5. Reliance; Interpretation. The Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon, any note, writing, resolution, notice, statement, certificate, telex, teletype or telescopes message, cablegram, radiogram, order or other document or telephone message signed, sent or made by the proper Person or entity, and, with respect to all legal matters pertaining hereto or to the Security Documents and its duties thereunder and hereunder, upon advice of counsel selected by it. If, in its good faith judgment, the Collateral Agent reasonably believes that any instructions given or delivered pursuant to any Security Document require judicial interpretation or are invalid or otherwise contrary to the provisions of any Security Document, any other Secured Debt Agreement or applicable law, the Collateral Agent shall have the right to petition a court of competent jurisdiction to determine the validity of, or otherwise interpret, any such instructions. In such event, the Collateral Agent shall not be required to carry out such instructions unless directed to do so, or it is determined that it may do so, by such court.

6. Indemnification. To the extent the Collateral Agent is not reimbursed and indemnified by the Assignors under the Security Documents, the Secured Creditors (other than Senior Second Lien Notes Creditors) will reimburse and indemnify the Collateral Agent, in proportion to their respective outstanding principal amounts (including, for this purpose, the Stated Amount of outstanding Letters of Credit) of Obligations, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Collateral Agent in performing its duties hereunder, or in any way relating to or arising out of its actions as Collateral Agent in respect of the Security Documents except for those resulting solely from the Collateral Agent's own gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). The indemnities set forth in this Section 6 shall survive the repayment of all Obligations, with the

respective indemnification at such time to be based upon the outstanding principal amounts (determined as described above) of Obligations at the time of the respective occurrence upon which the claim against the Collateral Agent is based or, if same is not reasonably determinable, based upon the outstanding principal amounts (determined as described above) of Obligations as in effect immediately prior to the termination of the Security Documents. The indemnities set forth in this Section 6 are in addition to any indemnities provided by the Banks to the Collateral Agent pursuant to the Credit Agreement, with the effect being that the Banks shall be responsible for indemnifying the Collateral Agent to the extent the Collateral Agent does not receive payments pursuant to this Section 6 from the Secured Creditors (other than Senior Second Lien Notes Creditors) (although in such event, and upon the payment in full of all such amounts owing to the Collateral Agent by the Banks, the Banks shall be subrogated to any rights of the Collateral Agent to receive payment from the Assignors).

7. The Collateral Agent in its Individual Capacity . With respect to its obligations as a Secured Creditor under any Secured Debt Agreement to which the Collateral Agent is a party, and to act as agent under one or more of such Secured Debt Agreements, the Collateral Agent shall have the rights and powers specified therein and herein for a "Secured Creditor", and may exercise the same rights and powers as though it were not performing the duties specified herein; and the terms "Secured Creditors", "Banks", "Required Banks", "Other Creditors", "holders of Notes", or any similar terms shall, unless the context clearly otherwise indicates, include the Collateral Agent in its individual capacity. The Collateral Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with any Assignor or any Affiliate or Subsidiary of any Assignor as if it were not performing the duties specified herein or in the other Secured Debt Agreements, and may accept fees and other consideration from the Assignors for services in connection with the Credit Agreement, the other Secured Debt Agreements and otherwise without having to account for the same to the Secured Creditors.

8. Holders. The Collateral Agent may deem and treat the payee of any Note or the registered owner of any Senior Second Lien Note as the owner thereof for all purposes hereof unless and until written notice of the assignment, transfer or endorsement thereof, as the case may be, shall have been filed with the Collateral Agent. Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is the holder of any Note or the registered owner of any Senior Second Lien Note, shall be final and conclusive and binding on any subsequent holder, transferee, assignee or endorsee, as the case may be, of such Note or Senior Second Lien Note, or of any Note or Senior Second Lien Note issued in exchange therefor.

9. Resignation, Removal and Appointment of Successor Collateral Agent . (a) The Collateral Agent may resign from the performance of all of its functions and duties hereunder and under the other Security Documents at any time by giving 20 Business Days' prior written notice to the Borrower and the Authorized Representatives. Such resignation shall take effect upon the appointment of a successor Collateral Agent pursuant to clause (b) or (c) below.

(b) If a successor Collateral Agent shall not have been appointed within said 20 Business Day period by the Required Secured Creditors, the Collateral Agent, with the consent (unless an Event of Default shall exist, in which case no such consent shall be required) of the Parent (which consent shall not be unreasonably withheld or delayed) shall then appoint a successor Collateral Agent who shall serve as Collateral Agent hereunder or thereunder until such time, if any, as the Required Secured Creditors appoint a successor Collateral Agent as provided above.

(c) If no successor Collateral Agent has been appointed pursuant to clause (b) above by the 20th Business Day after the date of such notice of resignation was given by the Collateral Agent, as a result of a failure by the Parent to consent to the appointment of such a successor Collateral Agent, (i) the Required Secured Creditors shall then appoint a successor Collateral Agent who shall serve as Collateral Agent hereunder or thereunder or (ii) if the Required Secured Creditors shall have failed to appoint a successor Collateral Agent by the 25th Business Day after the date such notice of resignation was given by the Collateral Agent, the Collateral Agent may appoint (or petition a court of competent jurisdiction to appoint) a successor Collateral Agent who shall serve as Collateral Agent hereunder or thereunder, in either such case until such time, if any, as the Required Secured Creditors appoint a successor Collateral Agent as provided above.

(d) Notwithstanding the foregoing, in connection with a replacement or refinancing of the Credit Agreement and the other Credit Documents related thereto, the requisite lenders under such new Credit Agreement may remove the Collateral Agent and appoint a successor Collateral Agent hereunder on behalf of all Secured Creditors and, in the absence of such removal and appointment by such new lenders, the Parent may so remove and/or appoint such successor Collateral Agent; provided that, the successor Collateral Agent shall be a bank, trust company or other financial institution having capital and retained earnings of at least $1,000,000,000 and shall be a party to the replacement or refinancing Credit Agreement (or an Affiliate of a party thereto). Upon acceptance of any appointment as the successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all of the rights, powers, privileges, duties and obligations of the retiring Collateral Agent hereunder and the retiring Collateral Agent shall be discharged from its duties and obligations hereunder. In this connection, each Secured Creditor shall, if requested by the successor Collateral Agent and, in the case of the Senior Second Lien Notes, without the necessity of obtaining the consent of the holders of Notes, so acknowledge such appointment in writing in form and substance reasonably satisfactory to the successor Collateral Agent.

(e) Notwithstanding anything to the contrary contained herein, after the First Lien Obligations Termination Date, the Required Secured Creditors may remove the Collateral Agent by an instrument in writing executed by the Required Secured Creditors and, thereupon, appoint a successor Collateral Agent designated by the Required Secured Creditors, effective as provided in Section 9(f) below.

(f) The resignation or removal of a Collateral Agent shall become effective only upon the execution and delivery of such documents or instruments as are necessary to

transfer the rights and obligations of the Collateral Agent under the Security Documents and the recording or filing of such documents, instruments or financing statements as may be necessary to maintain the priority and perfection of any security interest granted by the Security Documents. Copies of each such document or instrument shall be delivered to each of the Borrower, the Administrative Agent and the Senior Second Lien Notes Indenture Trustee. The appointment of a successor Collateral Agent pursuant to this Section 9 shall become effective upon the acceptance of such appointment (and execution by such successor of the documents, instruments or financing statements referred to above) and such successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent.

(g) After any resignation or removal hereunder of the Collateral Agent, the indemnification provisions specified in this Annex D and in the Security Documents shall continue to inure to its benefit as to any actions taken or omitted to be taken by it in connection with its agency hereunder while it was Collateral Agent.

10. Co-Collateral Agents; Separate Collateral Agents . (a) If at any time or times it shall be necessary or prudent in order to conform to any law of any jurisdiction in which any of the Collateral shall be located, or the Collateral Agent shall be advised by counsel, satisfactory to it, that it is necessary or prudent in the interest of the Collateral Agent or the Secured Creditors, then the Collateral Agent shall be entitled to appoint one or more sub-collateral agents or co-collateral agents, and in such case the Collateral Agent, the Borrower and each of the other Assignors having an interest in the Collateral located in the jurisdiction in which such separate or sub-collateral agent or co-collateral agent is to act shall execute and deliver all instruments and agreements necessary or proper to constitute another bank or trust company, or one or more individuals approved by the Collateral Agent, either to act as co-collateral agent or co-collateral agents jointly with the Collateral Agent originally named herein or any successor or successors, or to act as a separate or sub-collateral agent or agents of the Collateral Agent and the Secured Creditors in respect of any or all of the Collateral. If the Borrower and each of the other Assignors having an interest in the Collateral located in the jurisdiction in which such separate or sub-collateral agent or co-collateral agent is to act shall not have joined in the execution of such instruments or agreements within 10 days after the receipt of a written request from the Collateral Agent so to do, or if a Default or an Event of Default shall be continuing, the Collateral Agent may act under the foregoing provisions of this Section 10 without the concurrence of the Borrower and the other Assignors, and the Borrower and each of the other Assignors hereby irrevocably appoint the Collateral Agent as their agent and attorney to act for them under the foregoing provisions of this Section 10 in either of such contingencies.

(b) Every separate or sub-collateral agent (and all references herein to a " separate collateral agent" shall be deemed to refer also to a "sub-collateral agent" or a "collateral sub-agent") and every co-collateral agent, other than any collateral agent which may be appointed as successor to any Collateral Agent, shall, to the extent permitted by applicable law, be appointed and act and be such, subject to the following provisions and conditions, namely:

(i) all rights, remedies, powers, duties and obligations conferred upon, reserved to or imposed upon the Collateral Agent in respect of the custody, control and

management of monies, papers or securities shall be exercised solely by the Collateral Agent hereunder;

(ii) all rights, remedies, powers, duties and obligations conferred upon, reserved to or imposed upon the Collateral Agent hereunder shall be conferred, reserved or imposed and exercised or performed by the Collateral Agent and such separate collateral agent or separate collateral agents or co-collateral agent or co-collateral agents, jointly or severally, as shall be provided in the instrument appointing such separate collateral agent or separate collateral agents or co-collateral agent or co-collateral agents, except to the extent that, under any law of any jurisdiction in which any particular act or acts are to be performed, the Collateral Agent shall be incompetent or unqualified to perform such act or acts, in which event such rights, remedies, powers, duties and obligations shall be exercised and performed by such separate collateral agent or separate collateral agents or co-collateral agent or co-collateral agents;

(iii) no power given hereby to, or which it is provided hereby may be exercised by, any such separate collateral agent or separate collateral agents or co-collateral agent or co-collateral agents shall be exercised hereunder by such separate collateral agent or separate collateral agents or co-collateral agent or co-collateral agents except (subject to applicable law) jointly with, or with the consent or at the direction in writing of, the Collateral Agent (which direction shall be made in accordance with the provisions of the Security Agreement);

(iv) all provisions of the respective Security Documents relating to the Collateral Agent or to releases of Collateral shall apply to any such separate collateral agent or separate collateral agents or co-collateral agent or co-collateral agents;

(v) no collateral agent constituted under this Section 10 shall be personally liable by reason of any act or omission of any other separate or co-collateral agent or the Collateral Agent hereunder; and

(vi) the Collateral Agent at any time by an instrument in writing, executed by it, may accept the resignation of any such separate collateral agent or co-collateral agent and the Collateral Agent or the Required Secured Creditors may individually or jointly remove any such separate collateral agent or co-collateral agent, and in that case, by an instrument in writing executed by the Collateral Agent or the Required Secured Creditors, as the case may be, and the Collateral Agent or the Required Secured Creditors, as the case may be, may appoint a successor to such separate collateral agent or co-collateral agent, as the case may be, anything herein contained to the contrary notwithstanding. If the Borrower and each of the other Assignors shall not have joined in the execution of any such instrument within 10 days after the receipt of a written request from the Collateral Agent so to do, or if a Default or an Event of Default shall be continuing, the Collateral Agent shall have the power to accept the resignation of or remove any such separate collateral agent or co-collateral agent and to appoint a successor to such separate collateral agent or co-collateral agent, as the case may be, and to execute any such instrument without the concurrence of the Borrower or such other Assignor, and the Borrower and

each of the other Assignors hereby irrevocably appoint the Collateral Agent their agent and attorney to act for them in such connection in either of such contingencies. If the Collateral Agent shall have appointed a separate collateral agent or separate collateral agents or co-collateral agent or co-collateral agents as above provided, the Collateral Agent may at any time, by an instrument in writing, accept the resignation of or remove any such separate collateral agent or co-collateral agent, the successor to any such separate collateral agent or co-collateral agent to be appointed by the Borrower and each of the other Assignors and the Collateral Agent, or by the Collateral Agent alone, as hereinabove provided in this Section 10.

11. Acknowledgment of Priorities of Security Interests and Liens . (a) Each of the Secured Creditors acknowledges and agrees (w) to the relative priorities as to the Collateral (and the application of the proceeds therefrom) as provided in the Security Documents (including Section 7.5 of the Security Agreement) and acknowledges and agrees that such priorities (and the application of proceeds from the Collateral) shall not be affected or impaired in any manner whatsoever including, without limitation, on account of (i) the invalidity, irregularity, diminution in value or unenforceability of all or any part of any Secured Debt Agreement or any of the Obligations thereunder, (ii) the actual date and time of creation, execution, delivery, recording, filing, attachment or perfection of any security interests in the Collateral, (iii) any nonperfection of any Lien purportedly securing any of the Obligations (including, without limitation, whether any such Lien is now perfected, hereafter ceases to be perfected, is avoidable by any bankruptcy trustee or otherwise is set aside, invalidated or lapses), (iv) any amendment, change or modification of any Secured Debt Agreement, (v) any impairment, modification, change, exchange, release or subordination of or limitation on, any liability of, or stay of actions or lien enforcement proceedings against, any Assignor, its property, or its estate in bankruptcy resulting from any bankruptcy, arrangement, readjustment, composition, liquidation, rehabilitation, similar proceeding or otherwise involving or affecting any Assignor, (vi) any distribution of the Collateral upon the liquidation or dissolution of any Assignor, or the winding up of the assets or business of any Assignor, (vii) the initiation of any bankruptcy, moratorium, reorganization or other insolvency proceeding with respect to any Assignor or (viii) the taking of possession of any of the Collateral by the Collateral Agent or any of the Secured Creditors, (y) that the grants of security under the Security Documents constitute two separate and distinct grants of security, one in favor of the Collateral Agent for the benefit of the Bank Creditors and the second in favor of the Collateral Agent for the benefit of the Senior Second Lien Notes Creditors and (z) that Senior Second Lien Notes Creditors' claims against the Assignors in respect of the Collateral constitute second priority claims separate and apart (and of a different class and claim) from the Bank Creditors' claims against the Assignors in respect of the Collateral.

(b) Each Secured Creditor, by its acceptance of the benefits hereunder and of the Security Documents, hereby agrees for the benefit of the other Secured Creditors that, to the extent any additional or substitute collateral for any of the Obligations of the type covered by the Security Documents delivered by an Assignor to or for the benefit of any Secured Creditor, such collateral shall be subject to the provisions of this Annex D and of the Security Documents.

(c) Each of the Secured Creditors hereby agrees not to challenge or question in any proceeding the validity or enforceability of any Security Document (in each case as a whole or any term or provision contained therein) or the validity of any Lien or financing statement in favor of the Collateral Agent for the benefit of the Secured Creditors as provided in the respective Security Document, or the relative priority of any such Lien.

(d) If any Secured Creditor shall acquire by indemnification, subrogation, contract or otherwise (including pursuant to the Security Documents), any lien, estate, right or other interest in, or possession or control of, any of the assets of any Assignor that would otherwise constitute Collateral to secure (or providing security for) the respective Obligations owed to such Secured Creditor, that lien, estate, right or other interest shall, and any such possession or control shall, be held for the benefit of the Secured Creditors under the applicable Security Documents and shall be subject to the relative priorities set forth in the respective Security Documents.

12. Sharing Arrangements. (a) The Secured Creditors hereby agree that the provisions of the Security Documents with respect to allocations, priorities and distributions of proceeds of the Collateral shall prevail notwithstanding any event or circumstance, including, without limitation, in the event that, through the operation of any bankruptcy, reorganization, insolvency or other laws or otherwise, any Secured Creditor's security interest in the Collateral is avoided in whole or in part or is enforced with respect to some, but not all, of the respective Obligations then outstanding.

(b) The Secured Creditors agree that none of them shall be entitled to benefit from any avoidance action affecting or otherwise relating to any distribution or allocation made in accordance with the Security Documents, whether by preference or otherwise, it being understood and agreed that the benefit of any such avoidance action otherwise allocable to them shall instead be allocated and turned over for application in accordance with the priorities set forth in the respective Security Documents.

(c) In the event that any payment or distribution shall be received by any Secured Creditor in a manner that is inconsistent with the provisions of Section 7.5 of the Security Agreement, such payment or distribution shall be held by the respective Secured Creditor for the benefit of, and shall be paid over or delivered to, the respective Secured Creditors entitled thereto for application to such Secured Creditors' Obligations (including, without limitation, all interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of any Assignor at the rate provided for in the respective documentation for such Obligations, whether or not a claim for post-petition interest is allowed in any such proceeding) in accordance with Section 7.5 of the Security Agreement.

13. Provisions in the Event of Insolvency Proceedings. Without limiting the other provisions of this Annex D, upon the commencement of a case under the Bankruptcy Code by or against any Assignor:

(a) The Security Documents shall remain in full force and effect and enforceable pursuant to their respective terms in accordance with Section 510(a) of the Bankruptcy Code, and all references herein to such Assignor shall be deemed to apply to such entity as debtor-in-possession and to any trustee in bankruptcy for the estate of such entity.

(b) In any such case under the Bankruptcy Code, each Senior Second Lien Notes Creditor agrees not to take any action or vote in any way so as to contest (1) the validity or enforceability of any of the Security Documents or any of the Obligations thereunder, (2) the validity, priority or enforceability of the Liens, mortgages, assignments and security interests granted pursuant to the Security Documents with respect to the First Lien Obligations, or (3) the relative rights and duties of the holders of the First Lien Obligations and the Senior Second Lien Notes Obligations granted and/or established in any Security Document with respect to such Liens, mortgages, assignments, and security interests.

(c) So long as any First Lien Obligations are outstanding, without the express written consent of the Required Secured Creditors, none of the Senior Second Lien Notes Creditors shall (i) with respect to any rights under any Secured Debt Agreement or applicable law, seek in respect of any part of the Collateral or proceeds thereof or any Lien which may exist thereon, any relief from or modification of the automatic stay as provided in Section 362 of the Bankruptcy Code or seek or accept any form of adequate protection under either or both Sections 362 and 363 of the Bankruptcy Code with respect thereto except, with respect to the Senior Second Lien Notes Obligations, to the extent that their receipt of any such adequate protection would not reduce (or would not have the effect of reducing) or adversely affect the adequate protection that the Bank Creditors otherwise would be entitled to receive (it being understood that, in any event, (A) any such adequate protection shall only be afforded to the Senior Second Lien Notes Creditors if the Bank Creditors are satisfied with the adequate protection afforded to the Bank Creditors and (B) the Senior Second Lien Notes Creditors' receipt of any such adequate protection shall be subject to the application of proceeds Section set forth in Section 7.5 of the Security Agreement), (ii) oppose or object to any Bank Creditor obtaining a Lien or grant of administrative claim in connection with a grant of adequate protection, use of cash collateral or post-petition financing under Section 362, 363 or 364 of the Bankruptcy Code, (iii) oppose or object to the use of cash collateral by an Assignor, (iv) oppose or object to any post-petition financing (including any debtor-in-possession financing) provided by any of the Bank Creditors or provided by a third party pursuant to Section 364 of the Bankruptcy Code (including on a priming basis) on terms acceptable to the Required Secured Creditors, (v) oppose or object to or withhold consent from the disposition of assets by any Assignor under Section 363(b) or (f) of the Bankruptcy Code, (vi) oppose, object to, or vote against any plan of reorganization or disclosure statement the terms of which are consistent with the rights of the Bank Creditors under the Security Documents under which the Liens, mortgages, assignments and security interests and the priority thereof are granted and established, (vii) make an election pursuant to Section 1111(b) of the Bankruptcy Code, (viii) oppose or object to the determination of the extent of any Liens held by any of the Bank Creditors or the value of any claims of Bank Creditors under Section 506(a) of the Bankruptcy Code, or (ix) oppose or object to the payment of interest and expenses under Sections 506(b) and (c) of the Bankruptcy Code.

(d) In the event that any of the First Lien Obligations shall be paid in full and subsequently, for whatever reason (including, but not limited to, an order or judgment for disgorgement of a preference under Title 11 of the United Stated Code, or any similar law, or the settlement of any claim in respect thereof), formerly paid or satisfied First Lien Obligations become unpaid or unsatisfied, the terms and conditions of this Annex D shall be fully applicable thereto until all such First Lien Obligations are again paid in full in cash.

14. Special Releases and Waivers. (a) Each Secured Creditor agrees that neither the Collateral Agent nor the Required Secured Creditors (in directing the Collateral Agent to take any action with respect to the Collateral) shall have any duty or obligation to realize first upon any type of Collateral or to sell, dispose of or otherwise liquidate all or any portion of the Collateral in any manner that would maximize the return to any Class of Secured Creditors holding Obligations of any type (whether Credit Document Obligations or Senior Second Lien Notes Obligations), notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by such Class of Secured Creditors from such realization, sale, disposition or liquidation.

(b) Each of the Senior Second Lien Notes Creditors waives any claim which each such Senior Second Lien Notes Creditor may now or hereafter have against the Bank Creditors (or their representatives) arising out of (i) any and all actions which the Collateral Agent or the Bank Creditors take or omit to take (including, without limitation, actions with respect to the creation, perfection or continuation of Liens on the Collateral, actions with respect to the occurrence of an Event of Default, actions with respect to the foreclosure upon, sale, release, or depreciation of, or failure to realize upon, any of the security for the Obligations and actions with respect to the collection of any claim for all or any part of the Obligations from any account debtor, guarantor or any other party) in accordance with the respective Secured Debt Agreements or any other agreement related thereto or to the collection of the Obligations or the valuation, use, protection or release of the security for the Obligation, (ii) the Collateral Agent's or the Bank Creditors' election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b) of the Bankruptcy Code and/or (iii) any borrowing of, or grant of a security interest or administrative expense priority under Section 364 of the Bankruptcy Code to, any Assignor as debtor-in-possession.

15. Right to Amend, Etc. As between the Bank Creditors on the one hand and the Senior Second Lien Notes Creditors on the other hand, it is agreed that the Bank Creditors may at any time and from time to time, in their sole discretion, and without any obligation to give any notice or receive any consent from any Senior Second Lien Notes Creditor, in its capacity as such, (i) change the manner, place or terms of payment, or change or extend the time of payment of, or renew, alter, refinance, increase or add to the First Lien Obligations, (ii) obtain, release, or dispose of any Collateral for the First Lien Obligations (subject, however, to Sections 10.2 and 10.8 of the Security Agreement), or (iii) amend or supplement in any manner the Security Agreement and the other Credit Documents or any other agreements or instruments evidencing, securing or relating to the First Lien Obligations (subject, however, in the case of the First Lien Obligations, to Section 10.2 of the Security Agreement), and the provisions of this Annex D shall continue in full force and effect with respect to all such First Lien Obligations.

16. Nature of Obligations; Post-Petition Interest. Each Senior Second Lien Notes Creditor hereby acknowledges and agrees that (i) the Senior Second Lien Notes Creditor's claims against the Assignors in respect of the Collateral constitute junior claims separate and apart (and of a different class and claim) from the senior claims of the Bank Creditors against the Assignors in respect of the Collateral and (ii) the First Lien Obligations include all interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of any Assignor at the rate provided for in the respective Secured Debt Agreements governing the same, whether or not a claim for post-petition interest is allowed in any such case, proceeding or other action. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims against the Assignors in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior claims), then each Senior Second Lien Notes Creditor hereby acknowledges and agrees that all distributions pursuant to Section 7.5 of the Security Agreement or otherwise shall be made as if there were separate classes of senior and junior secured claims against the Assignors in respect of the Collateral (with the effect being that, to the extent that the aggregate value of the Collateral is sufficient (for this purpose ignoring all claims held by the Senior Second Lien Notes Creditors), the Bank Creditors shall be entitled to receive, in addition to amounts distributed to them in respect of principal, prepetition interest and other claims, all amounts owing in respect of post-petition interest at relevant contract rate (even though such claims may or may not be allowed in whole or in part in the respective bankruptcy, insolvency, reorganization or similar proceeding) before any distribution is made in respect of the claims held by the Senior Second Lien Notes Creditors, with the Senior Second Lien Notes Creditors hereby acknowledging and agreeing to turn over to the holders of the First Lien Obligations all amounts otherwise received or receivable by it to the extent needed to effectuate the intent of this sentence even if such turn-over of amounts has the effect of reducing the amount of the claim of the Senior Second Lien Notes Creditors.

17. Each of the agreements and acknowledgments made by each Secured Creditor is made on behalf of itself and its successors and assigns and is deemed effective by virtue of such Secured Creditors acceptance of the benefits of the Security Agreement and the other Security Documents.

Perfection Certificate

Perfection Certificate Supplement

Exhibit 4.30

$150,000,000

CLEAN HARBORS, INC.

11¼% Senior Secured Notes Due 2012

PURCHASE AGREEMENT

June 17, 2004

CREDIT SUISSE FIRST BOSTON LLC
GOLDMAN, SACHS & CO.
c/o Credit Suisse First Boston LLC
Eleven Madison Avenue
New York, N.Y. 10010-3629

Dear Sirs:

1. *Introductory*. Clean Harbors, Inc., a Massachusetts corporation (the "**Company**"), proposes, subject to the terms and conditions stated herein, to issue and sell to the several initial purchasers named in Schedule A hereto (the "**Purchasers**") $150,000,000 aggregate principal amount of its 11¼% Senior Secured Notes Due 2012 (the "**Offered Securities**") to be issued under an indenture dated as of June 30, 2004 (the "**Indenture**"), by and among the Company, the Guarantors and U.S. Bank National Association, as trustee (the "**Trustee**"), on a private placement basis pursuant to an exemption under Section 4(2) of the United States Securities Act of 1933, as amended (the "**Securities Act**").

The Offered Securities will be unconditionally guaranteed (the "**Subsidiary Guarantees**") on a senior secured basis by the Company's domestic subsidiaries listed on the signature page hereof (collectively, the "**Guarantors**"). The Company and the Guarantors to be party to the Indenture on the Closing Date (as defined below) are referred to collectively as the "**Issuers**."

The holders of the Offered Securities will be entitled to the benefits of the Security Documents (as defined in the Indenture) and a Registration Rights Agreement dated as of June 30, 2004, among the Issuers and the Purchasers (the "**Registration Rights Agreement**"), pursuant to which the Issuers agree to file a registration statement under the Securities Act (the "**Exchange Offer Registration Statement**") with the Securities Exchange Commission (the "**Commission**") registering the offering of senior notes (the "**Exchange Securities**") identical in all material respects to the Offered Securities (except that the Exchange Securities will not contain terms with respect to transfer restrictions) to be offered in exchange for the Offered Securities (the "**Exchange Offer**") and, if required by the Registration Rights Agreement, a shelf registration statement (the "**Shelf Registration Statement**" and, together with the Exchange Offer Registration Statement, the "**Registration Statements**") relating to the resale by certain holders of the Offered Securities.

Pursuant to the Security Documents, the Issuers have agreed, among other things, to grant to Credit Suisse First Boston, acting through its Cayman Islands Branch, as collateral agent (the "**Collateral Agent**"), for the benefit of the Trustee and the holders of the Offered Securities a second priority security interest in and lien on the Collateral (as defined in the Security Agreement described in Section 2(oo)), subject to certain exceptions and otherwise in accordance with the terms of the Indenture and the Security Documents and as described in the Offering Circular.

The Issuers, jointly and severally, hereby agree with the several Purchasers as follows:

2. *Representations and Warranties of the Company.* The Issuers, jointly and severally, represent and warrant to, and agree with, the several Purchasers that:

(a) A preliminary offering circular and an offering circular relating to the Offered Securities to be offered by the Purchasers have been prepared by the Issuers. Such preliminary offering circular (the "**Preliminary Offering Circular**") and offering circular (the "**Offering Circular**"), as supplemented as of the date of this Agreement, together with any other document approved by the Company for use in connection with the contemplated resale of the Offered Securities including such documents that are incorporated by reference therein are hereinafter collectively referred to as the " **Offering Document**." On the date of this Agreement and the Closing Date, the Offering Document does not and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Offering Document based upon written information furnished to the Company by any Purchaser specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 7(b) hereof. Except as disclosed in the Offering Document, on the date of this Agreement, the Company's Annual Report on Form 10-K most recently filed with the Commission and all subsequent reports (collectively, the " **Exchange Act Reports**") which have been filed by the Company with the Commission or sent to shareholders pursuant to the Securities Exchange Act of 1934 (the "**Exchange Act**") do not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Such documents, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act and the rules and regulations of the Commission thereunder.

(b) The Offered Securities have been duly authorized by the Issuers and, when delivered and paid for pursuant to this Agreement and the Indenture, will have been duly executed, authenticated, issued and delivered (assuming due authentication of the Offered Securities by the Trustee) and will conform to the description thereof contained in the Offering Document and will constitute valid and legally binding obligations of the Company entitled to the benefits provided in the Indenture and enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium

and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) The Subsidiary Guarantee to be endorsed on the Offered Securities by each Guarantor has been duly authorized by such Guarantor; and, when issued, will have been duly executed and delivered by each such Guarantor and will conform to the description thereof contained in the Offering Document. When the Offered Securities have been issued, executed and authenticated in accordance with the terms of the Indenture, the Subsidiary Guarantee of each Guarantor endorsed thereon will constitute a valid and legally binding obligation of such Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(d) The Exchange Securities have been duly authorized by the Issuers; and when the Exchange Securities are issued, executed and authenticated in accordance with the terms of the Exchange Offer, the Registration Rights Agreement and the Indenture, the Exchange Securities will be entitled to the benefits of the Indenture and will be the valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(e) The Subsidiary Guarantee to be endorsed on the Exchange Securities by each Guarantor has been duly authorized by such Guarantor; and, when issued, will have been duly executed and delivered by each such Guarantor and will conform to the description thereof contained in the Offering Document. When the Exchange Securities have been issued, executed and authenticated in accordance with the terms of the Exchange Offer and the Indenture, the Subsidiary Guarantee of each Guarantor endorsed thereon will constitute a valid and legally binding obligation of such Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(f) The Company has been duly incorporated and is an existing corporation in good standing under the laws of the Commonwealth of Massachusetts, with power and authority (corporate and other) to own its properties and conduct its business as described in the Offering Document; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification.

(g) The entities listed on Schedule B hereto are the only subsidiaries, direct or indirect, of the Company.

(h) Each subsidiary of the Company has been duly incorporated or organized, as the case may be, and is an existing corporation or other entity in good standing under the laws of the jurisdiction of its incorporation or formation, with power and authority (corporate

and other) to own its properties and conduct its business as described in the Offering Document; and each subsidiary of the Company is duly qualified to do business as a foreign corporation or organization in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where failure to be so qualified or to be in good standing would not have a Material Adverse Effect (as thereafter defined); all of the issued and outstanding capital stock of each subsidiary of the Company has been duly authorized and validly issued and is fully paid and, except to the extent otherwise provided under the laws of the jurisdictions in which certain of the foreign subsidiaries of the Company are organized, nonassessable; and the capital stock or other equity interest of each subsidiary owned by the Company, directly or through subsidiaries, is owned free from liens, encumbrances and defects, except for liens permitted by the Indenture and the Security Documents.

(i) The Indenture has been duly authorized by each Issuer; and when the Offered Securities are delivered and paid for pursuant to this Agreement on the Closing Date (as defined below), the Indenture will have been duly executed and delivered by each Issuer and will conform to the description in the Offering Document and the Indenture will constitute a valid and legally binding obligation of each of the Issuers, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(j) On the Closing Date, the Indenture will conform in all material respects to the requirements of the Trust Indenture Act of 1939, as amended (the "**TIA**" or "**Trust Indenture Act**"), and the rules and regulations of the Commission applicable to an indenture which is qualified thereunder.

(k) The Registration Rights Agreement has been duly authorized by the Company and each of the Guarantors and, on the Closing Date, will have been duly executed and delivered by the Company and each of the Guarantors. When the Registration Rights Agreement has been duly executed and delivered by each Issuer, the Registration Rights Agreement will be a valid and binding agreement of the Company and each of the Guarantors, enforceable against the Company and each Guarantor in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles. On the Closing Date, the Registration Rights Agreement will conform as to legal matters to the description thereof in the Offering Document.

(l) The Security Documents and the consummation by each of the Issuers of the transactions contemplated thereby have been duly authorized by each of the Issuers and, when the Security Documents are executed and delivered, each of the Security Documents will constitute a valid and legally binding agreement of each such Issuer, enforceable in accordance with its terms, except that the enforcement thereof may be subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles. On the Closing Date, the Security Documents will conform as to legal matters to the description thereof in the Offering Document.

(m) After consultation with counsel, neither the Company nor any of its subsidiaries is in violation of its respective charter or by-laws or in default in the performance of any obligation, agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other agreement or instrument that is material to the Company and its subsidiaries, taken as a whole, to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries or their respective property is bound.

(n) Except for certain registration rights held by the holders of the Company's outstanding redeemable Series C convertible preferred stock (the "**Series C Preferred Stock**") (which shall terminate upon the redemption of the Series C Preferred Stock on the Closing Date) and certain registration rights which shall be granted to such holders with respect to the warrants such holders shall receive as part of the redemption of the Series C Preferred Stock as described in the Offering Document, there are no contracts, agreements or understandings between the Company or any Guarantor and any person granting such person the right to require the Company or such Guarantor to file a registration statement under the Securities Act with respect to any securities of the Company or such Guarantor or to require the Company or such Guarantor to include such securities with the Offered Securities and Subsidiary Guarantees registered pursuant to any Registration Statement.

(o) Except as disclosed in the Offering Document, there are no contracts, agreements or understandings between any Issuer and any person that would give rise to a valid claim against any Issuer or any Purchaser for a brokerage commission, finder's fee or other like payment.

(p) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required for the consummation of the transactions contemplated by this Agreement, the Registration Rights Agreement and the Offering Document in connection with the issuance and sale of the Offered Securities by the Company except (x) as may be required under state securities laws and (y) for the order of the Commission declaring the Exchange Offer Registration Statement or the Shelf Registration Statement effective.

(q) The execution, delivery and performance of the Indenture, this Agreement and the Registration Rights Agreement, the Security Documents and the issuance and sale of the Offered Securities and the Subsidiary Guarantees and compliance with the terms and provisions thereof will not result in a breach or violation of any of the terms and provisions of, or constitute a default under, any statute, any rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over any Issuer or any subsidiary of such Issuer or any of their properties, or any agreement or instrument to which any Issuer or any such subsidiary is a party or by which any Issuer or any such subsidiary is bound or to which any of the properties of any Issuer or any such subsidiary is subject, or the charter or by-laws of any Issuer or any such subsidiary, and each Issuer has full power and authority to authorize, issue and sell the Offered Securities as contemplated by this Agreement and each Guarantor has full power and authority to authorize, issue and sell its Subsidiary Guarantee.

(r) This Agreement has been duly authorized, executed and delivered by each Issuer.

(s) Except as disclosed in the Offering Document, the Issuers and their respective subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, and good and marketable title to all leasehold estates in such property leased by them, free and clear of all liens, encumbrances or restrictions, except for liens permitted by the Indenture and the Security Documents.

(t) The Issuers and their respective subsidiaries possess adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by them and have not received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that, if determined adversely to the Issuers or any of their subsidiaries, would individually or in the aggregate have a material adverse effect on the condition (financial or other), business, properties or results of operations of the Issuers and their subsidiaries taken as a whole ("**Material Adverse Effect**").

(u) No labor dispute with the employees of the Issuers or any of their respective subsidiaries exists or, to the knowledge of any Issuer, is imminent that might have a Material Adverse Effect.

(v) The Issuers and their respective subsidiaries own, possess or can acquire on reasonable terms, adequate trademarks, trade names and other rights to inventions, know-how, patents, copyrights, confidential information and other intellectual property (collectively, " **intellectual property rights**") necessary to conduct the business now operated by them, or presently employed by them, and have not received any notice of infringement of or conflict with asserted rights of others with respect to any intellectual property rights that, if determined adversely to the Issuers or any of their respective subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(w) Except as disclosed in the Offering Document and as would not, individually or in the aggregate, have a Material Adverse Effect, (A) each of the Issuers and each of their respective subsidiaries is in compliance with, and not subject to liability under, Environmental Law (as defined below), (B) each of the Issuers and each of their respective subsidiaries has made all filings, and provided all financial assurances and notices, required under Environmental Law, and has, and is in compliance with, all permits required under Environmental Law and each of them is in full force and effect, (C) there is no civil, criminal or administrative action, suit, demand, claim, hearing, written notice of violation, proceeding, notice or demand letter or written request for information pending or, to the knowledge of the Issuers, threatened, or, to the knowledge of the Issuers, investigation threatened or pending, against any of the Issuers or any of their respective subsidiaries under Environmental Law, (D) no lien, charge, encumbrance or restriction has been recorded under any Environmental Law with respect to any asset, facility or property owned, operated, leased or controlled by any of the Issuers or any of their respective subsidiaries, (E) none of the Issuers or any of their respective subsidiaries has received notice that it has been identified as a potentially responsible party under the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended (" **CERCLA**"), or any comparable Environmental Law, (F) no property or facility of any of the Issuers or any of their respective subsidiaries is (i) listed or proposed for listing on the National Priorities List promulgated pursuant to CERCLA, (ii) listed in the Comprehensive Environmental Response, Compensation and Liability Information System List promulgated pursuant to CERCLA, or (iii) listed on any comparable list of sites known or suspected to be contaminated with Hazardous Material (as defined below) as maintained by any governmental authority, (G) neither any of the Issuers nor any of their respective subsidiaries is conducting or financing an investigation, or response, corrective or other action pursuant to Environmental Law at any site or facility, nor is any of them subject to or party to any order, judgment, decree, contract or agreement which obligates it to conduct or finance any such action nor has any of them assumed by contract or agreement any obligation or liability under Environmental Law, and (H) there are no past or present events, activities, operations, occurrences or conditions which could reasonably be expected to prevent or interfere with compliance by any of the Issuers or any of their respective subsidiaries with, or result in liability of any of them under, Environmental Law (including, without limitation, any capital or operating expenditures required for cleanup, closure or compliance with Environmental Law, any constraints on operating activities and any potential liability to third parties).

For purposes of this Agreement, "**Environmental Law**" means the common law and all applicable federal, provincial, state and local laws or regulations, codes, ordinances, orders, decrees, judgments or injunctions issued, promulgated, approved or entered thereunder, relating to pollution or protection of public or employee health and safety, the environment or natural resource damages including, without limitation, those relating to (i) emissions, discharges, releases or threatened releases of Hazardous Material in or into the environment (including, without limitation, ambient air, surface water, groundwater, drinking water, land surface or subsurface strata, and natural resources such as wetlands, flora and fauna) or exposure thereto, (ii) the manufacture, processing, distribution, use, generation, treatment storage, disposal, transport, handling or recycling of Hazardous Material, (iii) zoning, facility siting, financial assurance, environmental impact assessment or review, reclamation or land use and (iv) underground or aboveground storage tanks and related piping, and emissions, discharges, releases or threatened releases therefrom. " **Hazardous Material**" means any substance, material, pollutant, contaminant, chemical, constituent or waste, including without limitation, petroleum and petroleum products, subject to regulation under or which could give rise to liability under Environmental Law.

(x) Except as disclosed in the Offering Document, there are no pending actions, suits or proceedings against or affecting any Issuer, any of their respective subsidiaries or any of their respective properties that, if determined adversely to such Issuer or any such subsidiary, would individually or in the aggregate have a Material Adverse Effect, or would materially and adversely affect the ability of the Issuers to perform their obligations under the Indenture, this Agreement, the Registration Rights Agreement or the Security Documents, or which are otherwise material in the context of the sale of the Offered Securities and Subsidiary Guarantees; and no such actions, suits or proceedings are threatened or, to any Issuer's knowledge, contemplated.

(y) The financial statements included in the Offering Document present fairly the financial position of the Company and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and, except as otherwise disclosed in the Offering Document, such financial statements have been prepared in conformity with the generally accepted accounting principles in the United States applied on a consistent basis.

(z) Except as disclosed in the Offering Document, since the date of the latest audited financial statements included in the Offering Document there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as a whole, and, except as disclosed in or contemplated by the Offering Document, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(aa) The Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Securities Exchange Act of 1934 and files reports with the Commission on the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

(bb) No Issuer is an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the United States Investment Company Act of 1940 (the "**Investment Company Act**") ; and no Issuer is, and, after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the Offering Document, no Issuer will be an "investment company" as defined in the Investment Company Act.

(cc) No securities of the same class (within the meaning of Rule 144A(d)(3) under the Securities Act) as the Offered Securities are listed on any national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system.

(dd) No form of general solicitation or general advertising (as defined in Regulation D under the Securities Act) was used by the Company, the Guarantors or any of their respective representatives (other than the Purchasers, as to whom the Company and the Guarantors make no representation) in connection with the offer and sale of the Offered Securities and the Subsidiary Guarantees contemplated by this Agreement, including, but not limited to, articles, notices or other communications published in any newspaper, magazine, or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(ee) The offer and sale of the Offered Securities by the Company and the offer of the Subsidiary Guarantees by the Guarantors to the several Purchasers in the manner contemplated by this Agreement will be exempt from the registration requirements of the Securities Act by reason of Section 4(2) thereof and Regulation S ("**Regulation S**") thereunder; and it is not necessary to qualify an indenture in respect of the Offered Securities under the Trust Indenture Act.

(ff) None of the Company, the Guarantors nor any of their respective affiliates or any person acting on its or their behalf (other than the Purchasers, as to whom the Company and the Guarantors make no representation) has engaged or will engage in any directed selling efforts within the meaning of Regulation S with respect to the Offered Securities or the Subsidiary Guarantees.

(gg) None of the Company, the Guarantors nor any of their respective affiliates, nor any person acting on its or their behalf (i) has, within the six-month period prior to the date hereof, offered or sold in the United States or to any U.S. person (as such terms are defined in Regulation S under the Securities Act) the Offered Securities or the Subsidiary Guarantees or any security of the same class or series as the Offered Securities or the Subsidiary Guarantees or (ii) has offered or will offer or sell the Offered Securities or the Subsidiary Guarantees (A) in the United States by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act or (B) with respect to any such securities sold in reliance on Rule 903 of Regulation S under the Securities Act, by means of any directed selling efforts within the meaning of Rule 902(c) of Regulation S. The Company, its affiliates and any person acting on its or their behalf have complied and will comply with the offering restrictions requirement of Regulation S. The Company has not entered and will not enter into any contractual arrangement with respect to the distribution of the Offered Securities except for this Agreement.

(hh) The Offered Securities and Subsidiary Guarantees offered and sold in reliance on Regulation S have been and will be offered and sold only in offshore transactions.

(ii) The sale of the Offered Securities and Subsidiary Guarantees pursuant to Regulation S is not part of a plan or scheme to evade the registration provisions of the Securities Act.

(jj) No registration under the Securities Act of the Offered Securities or the Subsidiary Guarantees is required for the sale of the Offered Securities and the Subsidiary Guarantees to the Purchasers as contemplated by the Offering Document and this Agreement (“ **Exempt Resales**”), assuming the accuracy of the Purchaser’s representations set forth in Section 4 hereof.

(kk) The Company maintains and will maintain disclosure controls and procedures (as defined as Rule 13a-14 of the Exchange Act) designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported in accordance with the Exchange Act and the rules and regulations thereunder. The Company has carried out and will carry out evaluations, under the supervision and with the participation of the Company’s management, of the effectiveness of the design and operation of the Company’s disclosure controls and procedures in accordance with Rule 13a-15 of the Exchange Act.

(ll) Neither the Company nor any of its subsidiaries nor any agent thereof acting on the behalf of them has taken, and none of them will take, any action that might cause this Agreement or the issuance or sale of the Offered Securities to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

(mm) No "nationally recognized statistical rating organization" as such term is defined for purposes of Rule 436(g)(2) under the Securities Act (i) has imposed (or has informed the Company or any Guarantor that it is considering imposing) any condition (financial or otherwise) on the Company's or any Guarantor's retaining any rating assigned to the Company or any Guarantor, any securities of the Company or any Guarantor or (ii) has indicated to the Company or any Guarantor that it is considering (a) the downgrading, suspension, or withdrawal of, or any review for a possible change that does not indicate the direction of the possible change in, any rating so assigned or (b) any change in the outlook for any rating of the Company, any Guarantor or any securities of the Company or any Guarantor.

(nn) There is no "substantial U.S. market interest" as defined in Rule 902(n) of Regulation S in the Company's debt securities.

(oo) The Security Agreement dated as of the Closing Date among the Company and the Guarantors, as Assignors, the Trustee and the Collateral Agent (the "**Security Agreement**") and the Mortgages (as defined in Section 6(h) below) (together the Security Agreement and the Mortgages are referred to herein as the "**Second Lien Security Instruments**") once executed and delivered, will create, in favor of the Collateral Agent for the benefit of the Trustee and the holders of the Offered Securities, a valid and enforceable, and upon filing or recording of the appropriate financing statements, mortgages and similar instruments with the appropriate governmental authorities (and the payment of the appropriate filing or recording fee and any applicable taxes) and delivery of the applicable documents to the Collateral Agent in accordance with the provisions of the Second Lien Security Instruments, perfected security interest in and lien upon all of the Collateral (except for (i) the Excluded Collateral (as defined in the Security Agreement) and (ii) Collateral in which a security interest cannot be obtained under the Uniform Commercial Code or upon which a lien cannot be obtained by the recordation of a mortgage), superior to and prior to the rights of all third persons other than the lien granted to the Collateral Agent for the benefit of the Bank Creditors (as defined in the Security Agreement) under the Security Documents and such other entities entitled to have first priority liens pursuant to the terms of the Indenture and the Security Documents.

3. *Purchase, Sale and Delivery of Offered Securities.* On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to sell to the Purchasers, and the Purchasers agree, severally and not jointly, to purchase from the Company, at a purchase price of 95.9828325% of the principal amount thereof the respective principal amounts of the Offered Securities set forth opposite the names of the several Purchasers in Schedule A hereto.

The Company will deliver against payment of the purchase price the Offered Securities in the form of one or more permanent global securities in definitive form (the "**Global Securities**") deposited with the Trustee as custodian for The Depository Trust Company ("**DTC**") and registered in the name of Cede & Co., as nominee for DTC. Interests in any permanent Global Securities will be held only in book-entry form through DTC, except in the limited circumstances described in the Offering Document. Payment for the Offered Securities shall be made by the Purchasers in Federal (same day) funds by wire transfer to an account at a bank acceptable to the Purchasers at the office of Cahill Gordon & Reindel LLP at 9:30 A.M. (New York time), on June 30, 2004, or at such other time not later than seven full business days thereafter as the Purchasers and the Company determine, such time being herein referred to as the "**Closing Date**," against delivery to the Trustee as custodian for DTC of the Global Securities representing all of the Offered Securities. The Global Securities will be made available for checking at the above office at least 24 hours prior to the Closing Date.

4. *Representations by Purchasers; Resale by Purchasers.* (a) Each Purchaser severally represents and warrants to the Company that it is an "accredited investor" within the meaning of Regulation D under the Securities Act.

(b) Each Purchaser severally acknowledges that the Offered Securities have not been registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except in accordance with Regulation S or pursuant to an exemption from the registration requirements of the Securities Act. Each Purchaser severally represents and agrees that it has offered and sold the Offered Securities, and will offer and sell the Offered Securities only in accordance with Rule 903 or Rule 144A under the Securities Act (" **Rule 144A**"). Accordingly, neither such Purchaser nor its affiliates, nor any persons acting on its or their behalf, have engaged or will engage in any directed selling efforts with respect to the Offered Securities or the Subsidiary Guarantees, and such Purchaser, its affiliates and all persons acting on its or their behalf have complied and will comply with the offering restrictions requirement of Regulation S and Rule 144A.

(c) Each Purchaser severally agrees that it and each of its affiliates has not entered and will not enter into any contractual arrangement with respect to the distribution of the Offered Securities except for any such arrangements with the other Purchaser or affiliates of the other Purchaser with the prior written consent of the Company.

(d) Each Purchaser severally agrees that it and each of its affiliates will not offer or sell the Offered Securities in the United States by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act, including, but not limited to (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, or (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising. Each Purchaser severally agrees, with respect to resales made in reliance on Rule 144A of any of the Offered Securities, to deliver either with the confirmation of such resale or otherwise prior to settlement of such resale a notice to the effect that the resale of such Offered Securities has been made in reliance upon the exemption from the registration requirements of the Securities Act provided by Rule 144A.

(e) Each of the Purchasers severally represents and agrees that (i) it has not offered or sold and prior to the expiry of a period of six months from the closing date, will not offer or sell any Offered Securities to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995; (ii) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of the Financial Services and Markets Act 2000 (the "FSMA")) received by it in connection with the issue or sale of any Offered Securities in circumstances in which section 21(1) of the FSMA does not apply to the Issuer or the Guarantor; and (iii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Offered Securities in, from or otherwise involving the United Kingdom

5. *Certain Agreements of the Issuers.* The Company and, as applicable, each Issuer, agrees with the several Purchasers that:

(a) The Company will advise the Purchasers promptly of any proposal to amend or supplement the Offering Document and will not effect such amendment or supplementation without the Purchasers' consent. If, at any time prior to the completion of the resale of the Offered Securities by the Purchasers, any event occurs as a result of which the Offering Document as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any such time to amend or supplement the Offering Document to comply with any applicable law, the Company promptly will notify the Purchasers of such event and promptly will prepare, at its own expense, an amendment or supplement which will correct such statement or omission or effect such compliance. Neither the Purchasers' consent to, nor the Purchasers' delivery to offerees or investors of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 6.

(b) The Company will furnish to the Purchasers copies of any preliminary offering circular, the Offering Document and all amendments and supplements to such documents, in each case as soon as available and in such quantities as the Purchasers request, and the Company will furnish to the Purchasers on the date hereof three copies of the Offering Document signed by a duly authorized officer of the Company, one of which will include the independent accountants' reports therein manually signed by such independent accountants. At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company will promptly furnish or cause to be furnished to the Purchasers and, upon request of holders and prospective purchasers of the Offered Securities, to such holders and purchasers, copies of the information required to be delivered to holders and prospective purchasers of the Offered Securities pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto) in order to permit compliance with Rule 144A in connection with resales by such holders of the Offered

Securities. The Company will pay the expenses of printing and distributing to the Purchasers all such documents.

(c) The Company will arrange for the qualification of the Offered Securities for sale and the determination of their eligibility for investment under the laws of such jurisdictions in the United States and Canada as the Purchasers designate and will continue such qualifications in effect so long as required for the resale of the Offered Securities by the Purchasers, provided that the Company will not be required to qualify as a foreign corporation or to file a general consent to service of process in any such state.

(d) During the period of two years after the Closing Date, the Company will, upon request, furnish to the Purchasers and any holder of Offered Securities a copy of the restrictions on transfer applicable to the Offered Securities .

(e) During the period of two years after the Closing Date, the Company will not, and will not permit any of its affiliates (as defined in Rule 144 under the Securities Act) to, resell any of the Offered Securities that have been reacquired by any of them.

(f) During the period of two years after the Closing Date, none of the Issuers will be or become, an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the Investment Company Act.

(g) The Issuers will pay all expenses incidental to the performance of their obligations under this Agreement, the Indenture, the Registration Rights Agreement and the Security Documents including (i) the fees and expenses of the Trustee and its professional advisers; (ii) all expenses in connection with the execution, issue, authentication, packaging and initial delivery of the Offered Securities and, as applicable, the Exchange Securities, the preparation and printing of this Agreement, the Registration Rights Agreement, the Security Documents, the Offered Securities, the Indenture, the Offering Document and amendments and supplements thereto, and any other document relating to the issuance, offer, sale and delivery of the Offered Securities and as applicable, the Exchange Securities; (iii) the cost of listing the Offered Securities and qualifying the Offered Securities for trading in The Portal[SM] Market ("**PORTAL**") and any expenses incidental thereto; (iv) the cost of any advertising approved by the Company in connection with the issue of the Offered Securities; (v) for any expenses (including fees and disbursements of counsel) incurred in connection with qualification of the Offered Securities or the Exchange Securities for sale under the laws of such jurisdictions in the United States and Canada as the Purchasers designate and the printing of memoranda relating thereto; (vi) for any fees charged by investment rating agencies for the rating of the Offered Securities or the Exchange Securities; (vii) for expenses incurred in distributing preliminary offering circulars and the Offering Document (including any amendments and supplements thereto) to the Purchasers; and (viii) all costs associated with the perfection and maintenance of the security interests to be obtained under the Indenture and the Security Documents. The Company will also pay or reimburse the Purchasers (to the extent incurred by them) for all travel expenses of the Purchasers and the Company's officers and employees and any

other expenses of the Purchasers and the Company in connection with attending or hosting meetings with prospective purchasers of the Offered Securities from the Purchasers.

(h) In connection with the offering, until the Purchasers shall have notified the Company of the completion of the resale of the Offered Securities, neither the Company nor any of its affiliates has or will, either alone or with one or more other persons, bid for or purchase for any account in which it or any of its affiliates has a beneficial interest any Offered Securities or attempt to induce any person to purchase any Offered Securities; and neither it nor any of its affiliates will make bids or purchases for the purpose of creating actual, or apparent, active trading in, or of raising the price of, the Offered Securities.

(i) For a period of 180 days after the date of the initial offering of the Offered Securities by the Purchasers, the Issuers will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, or file with the Commission a registration statement under the Act relating to, any United States dollar-denominated debt securities issued or guaranteed by any Issuer and having a maturity of more than one year from the date of issue or publicly disclose the intention to make any such offer, sale, pledge, disposition or filing, without the prior written consent of the Purchasers. The Company will not at any time offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any securities under circumstances where such offer, sale, pledge, contract or disposition would cause the exemption afforded by Section 4(2) of the Securities Act or the safe harbor of Regulation S thereunder to cease to be applicable to the offer and sale of the Offered Securities.

(j) The Issuers will apply the net proceeds from the sale of the Offered Securities as set forth under "Use of Proceeds" in the Offering Circular.

6. *Conditions of the Obligations of the Purchasers.* The obligations of the several Purchasers to purchase and pay for the Offered Securities will be subject to the accuracy of the representations and warranties on the part of the Issuers herein, to the accuracy of the statements of officers of the Issuers made pursuant to the provisions hereof, to the performance by the Issuers of their respective obligations hereunder and to the following additional conditions precedent:

(a) The Purchasers shall have received a letter, dated the date of this Agreement, of PricewaterhouseCoopers LLP in agreed form confirming that they are independent public accountants within the meaning of the Securities Act and the applicable published rules and regulations thereunder (" **Rules and Regulations**") and to the effect that:

(i) in their opinion the financial statements examined by them and included in the Offering Document and in the Exchange Act Reports comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the related published Rules and Regulations;

(ii) they have performed the procedures specified by the American Institute of Certified Public Accountants for a review of interim financial information as described in Statement of Auditing Standards No. 71 or No. 100, as applicable,

Interim Financial Information, on the unaudited financial statements included in the Offering Document and in the Exchange Act Reports;

(iii) on the basis of the review referred to in clause (ii) above, a reading of the latest available interim financial statements of the Company, inquiries of officials of the Company who have responsibility for financial and accounting matters and other specified procedures, nothing came to their attention that caused them to believe that:

(A) the unaudited financial statements included in the Offering Document or in the Exchange Act Reports do not comply as to form in all material respects with Regulation S-X of the Commission, except that the Company has not included those financial statements required to be filed pursuant to Regulation S-X, Article 3-05, "Financial Statements of Business Acquired or to be Acquired," or any material modifications should be made to such unaudited financial statements for them to be in conformity with generally accepted accounting principles;

(B) at the date of the latest available balance sheet read by such accountants, or at a subsequent specified date not more than three business days prior to the date of this Agreement, there was any change in the capital stock or any increase in long-term debt of the Company and its consolidated subsidiaries, as compared with amounts shown on the latest balance sheet included in the Offering Document, except as disclosed in the Offering Document; or

(C) for the period from the closing date of the latest income statement included in the Offering Document to the closing date of the latest available schedule of consolidated billings read by such accountants there were any decreases, as compared with the corresponding period of the previous year, in consolidated billings;

except in all cases set forth in clauses (B) and (C) above for changes, increases or decreases which the Offering Document discloses have occurred or may occur or which are described in such letter; and

(iv) they have compared specified dollar amounts (or percentages derived from such dollar amounts) and other financial information contained in the Offering Document and the Exchange Act Reports (in each case to the extent that such dollar amounts, percentages and other financial information are derived from the general accounting records of the Company and its subsidiaries subject to the internal controls of the Company's accounting system or are derived directly from such records by analysis or computation) with the results obtained from inquiries, a reading of such general accounting records and other procedures specified in such letter and have found such dollar amounts, percentages and other financial

information to be in agreement with such results, except as otherwise specified in such letter.

(b) Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or other), business, properties or results of operations of the Issuers and their respective subsidiaries taken as one enterprise which, in the judgment of the Purchasers, is material and adverse and makes it impractical or inadvisable to proceed with completion of the offering or the sale of and payment for the Offered Securities; (ii) any downgrading in the rating of any debt securities of the Issuers by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Securities Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Issuers (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) or any announcement that the Company has been placed on negative outlook; (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls as would, in the judgment of the Purchasers, be likely to prejudice materially the success of the proposed issue, sale or distribution of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market, (iv) any material suspension or material limitation of trading in securities generally on the New York Stock Exchange or any setting of minimum prices for trading on such exchange, or any suspension of trading of any securities of the Issuers on any exchange or in the over-the-counter market; (v) any banking moratorium declared by U.S. Federal or New York authorities; (vi) any major disruption of settlements of securities or clearance services in the United States or (vii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Purchasers, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency makes it impractical or inadvisable to proceed with completion of the offering or sale of and payment for the Offered Securities.

(c) The Purchasers shall have received an opinion, dated the Closing Date, of Davis, Malm & D'Agostine, P.C., counsel for the Company, that:

(i) The Company has been duly incorporated and is an existing corporation in good standing under the laws of the Commonwealth of Massachusetts, with corporate power and authority to own its properties and conduct its business as described in the Offering Document; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification except where failure to be so qualified or to be in good standing would not individually or in the aggregate have a material adverse effect or prospective material adverse effect on the condition (financial or other), business, properties or results of operations of the Issuers and their subsidiaries taken as a whole;

(ii) Each subsidiary of the Company which is a Guarantor has been duly incorporated or organized, as applicable, and is an existing corporation in good standing under the laws of the jurisdiction of its incorporation or organization, as applicable, with power and authority (corporate and other) to own its properties and conduct its business as described in the Offering Document; and each subsidiary of the Company is duly qualified to do business as a foreign corporation or organization, as applicable, in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification except where failure to be so qualified or to be in good standing would not individually or in the aggregate have a material adverse effect or prospective material adverse effect on the condition (financial or other), business, properties or results of operations of the Issuers and their subsidiaries taken as a whole; all of the issued and outstanding capital stock of each such subsidiary of the Company has been duly authorized and validly issued and is fully paid and nonassessable; and the capital stock of each subsidiary owned by the Company, directly or through subsidiaries, is owned free from liens, encumbrances and defects except for liens permitted by the Indenture and the Security Documents;

(iii) The Indenture has been duly authorized, executed and delivered; the Offered Securities have been duly authorized, executed, authenticated, issued and delivered; and the Indenture and the Offered Securities conform to the descriptions thereof contained in the Offering Document and constitute valid and legally binding obligations of the Issuers, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(iv) The Indenture conforms in all material respects to the requirements of the Trust Indenture Act and the rules and regulations of the Commission applicable to an indenture which is qualified thereunder.

(v) The Exchange Securities have been duly authorized by the Company and the Guarantors; and when the Exchange Securities are issued, executed and authenticated in accordance with the terms of the Exchange Offer and the Indenture, the Exchange Securities will be entitled to the benefits of the Indenture and will be the valid and legally binding obligations of the Company and the Guarantors, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(vi) The Subsidiary Guarantee to be endorsed on the Offered Securities by each Guarantor has been duly authorized by such Guarantor, and has been duly executed and delivered by each such Guarantor and conforms to the description thereof contained in the Offering Document. When the Offered Securities have been issued, executed and authenticated in accordance with the Indenture and delivered to and paid for by the Purchasers in accordance with the terms of this

Agreement, the Subsidiary Guarantee of each Guarantor endorsed thereon will constitute a valid and legally binding obligation of such Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(vii) The Subsidiary Guarantee to be endorsed on the Exchange Securities by each Guarantor has been duly authorized by such Guarantor; and, when issued, will have been duly executed and delivered by each such Guarantor and will conform to the description thereof contained in the Offering Document. When the Exchange Securities have been issued, executed and authenticated in accordance with the terms of the Exchange Offer and the Indenture, the Subsidiary Guarantee of each Guarantor endorsed thereon will constitute a valid and legally binding obligation of such Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(viii) The Registration Rights Agreement has been duly authorized, executed and delivered by the Company and each of the Guarantors, conforms to the description thereof in the Offering Document and is a valid and binding agreement of the Company and each of the Guarantors, enforceable against the Company and each Guarantor in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(ix) The Security Documents have been duly authorized, executed and delivered by the Company and each of the Guarantors, and constitute valid and binding agreements of the Company and each of the Guarantors, enforceable against the Company and each Guarantor in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles. The Security Documents conform to the description thereof contained in the Offering Document;

(x) Neither the Company nor any of its subsidiaries is in violation of its respective charter or by-laws;

(xi) To their knowledge, except for certain registration rights held by the holders of the Company's outstanding Series C Preferred Stock (which shall terminate upon the redemption of the Series C Preferred Stock on the Closing Date) and certain registration rights which shall be granted to such holders with respect to the warrants such holders shall receive as part of the redemption of the Series C Preferred Stock as described in the Offering Document, there are no contracts, agreements or understandings between the Company or any Guarantor and any person granting such person the right to require the Company or such Guarantor

to file a registration statement under the Securities Act with respect to any securities of the Company or such Guarantor or to require the Company or such Guarantor to include such securities with the Securities and Subsidiary Guarantees registered pursuant to any Registration Statement;

(xii) No registration under the Securities Act of the Offered Securities or the Subsidiary Guarantees is required for the sale of the Offered Securities and the Subsidiary Guarantees to the Purchasers as contemplated hereby or for the Exempt Resales assuming the accuracy of the Purchaser's representations set forth in Section 4 hereof;

(xiii) No Issuer is and, after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the Offering Document, no Issuer will be an "investment company" as defined in the Investment Company Act;

(xiv) No consent, approval, authorization or order of, or filing with, any governmental agency or body or any court is required for the consummation of the transactions contemplated by this Agreement and the Registration Rights Agreement in connection with the issuance or sale of the Offered Securities by the Company, except such as may be required under state securities laws and except for the order of the Commission declaring the Exchange Offer Registration Statement or the Shelf Registration Statement effective;

(xv) To their knowledge, except as disclosed in the Offering Document, there are no pending actions, suits or proceedings against or affecting the Issuers, any of their respective subsidiaries or any of their respective properties that, if determined adversely to the Issuers or any of their respective subsidiaries, would individually or in the aggregate have a Material Adverse Effect, or would materially and adversely affect the ability of the Issuers to perform their obligations under the Indenture, this Agreement, the Registration Rights Agreement or the Security Documents, or which are otherwise material in the context of the sale of the Offered Securities; and no such actions, suits or proceedings are threatened or, to such counsel's knowledge, contemplated;

(xvi) The execution, delivery and performance of the Indenture, this Agreement, the Registration Rights Agreement and the Security Documents and the issuance and sale of the Offered Securities and compliance with the terms and provisions thereof will not result in a breach or violation of any of the terms and provisions of, or constitute a default under, any statute, any rule, regulation or order of any governmental agency or body or any court having jurisdiction over the Company or any subsidiary of the Company or any of their properties, or any agreement or instrument of which they are aware to which the Company or any such subsidiary is a party or by which the Company or any such subsidiary is bound or to which any of the properties of the Company or any such subsidiary is subject, or the charter or by-laws of the Company or any such subsidiary, and the

Company has full power and authority to authorize, issue and sell the Offered Securities as contemplated by this Agreement;

(xvii) Such counsel have no reason to believe that the Offering Circular or any amendment or supplement thereto, or any Exchange Act Report, as of the date hereof or as of the Closing Date, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; the descriptions in the Offering Circular and the Exchange Act Reports of statutes, legal and governmental proceedings and contracts and other documents are accurate and fairly present the information required to be shown; it being understood that such counsel need express no opinion as to the financial statements or other financial data contained in the Offering Circular and the Exchange Act Reports;

(xviii) This Agreement has been duly authorized, executed and delivered by the Issuers; and

(xix) It is not necessary in connection with (i) the offer, sale and delivery of the Offered Securities by the Company to the several Purchasers pursuant to this Agreement or (ii) the resales of the Offered Securities by the several Purchasers in the manner contemplated by this Agreement, to register the Offered Securities under the Securities Act or to qualify an indenture in respect thereof under the Trust Indenture Act.

(d) The Purchasers shall have received from Cahill Gordon & Reindel LLP, counsel for the Purchasers, such opinion or opinions, dated the Closing Date, with respect to the Offering Circular, the exemption from registration for the offer and sale of the Offered Securities by the Company to the several Purchasers and the resales by the several Purchasers as contemplated hereby and other related matters as the Purchasers may require, and the Issuers shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters with reference to same in the Offering Circular.

(e) The Purchasers shall have received a certificate, dated the Closing Date, of the President or any Vice President and a principal financial or accounting officer of the Company in which such officers, to the best of their knowledge after reasonable investigation, shall state that the representations and warranties of the Issuers in this Agreement are true and correct, that the Issuers have complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date, and that, subsequent to the respective dates of the most recent financial statements in the Offering Document, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties or results of operations of the Issuers and their subsidiaries taken as a whole except as set forth in the Offering Document or as described in such certificate.

(f) The Purchasers shall have received a letter, dated the Closing Date, of PricewaterhouseCoopers LLP which meets the requirements of subsection (a) of this Section, except that the specified date referred to in such subsection will be a date not more than three days prior to such Closing Date for the purposes of this subsection.

(g) The Purchasers shall have received a copy of a certificate evidencing the insurance requirements (i) in form and substance acceptable to the Collateral Agent that (A) provides that the insurance has been issued, is in full force and effect, and conveys all the rights and privileges afforded under the insurance policies, (B) provides an unequivocal obligation to give notice within 30 days in advance to additional interest parties of termination and notification of changes to the policy that would affect any such interest and (C) names the Collateral Agent as loss payee and additional insured and (ii) that otherwise complies with the requirements with respect thereto set forth in any mortgage required pursuant hereto to be delivered to the Purchasers.

(h) The Purchasers shall have received the Second Lien Security Instruments (including, without limitation, a Mortgage (as defined below) from each applicable Mortgagor (as defined in the Mortgages and as shown on Annex A attached hereto), in form and substance acceptable to the Purchasers (each a "**Mortgage**") encumbering each real property set forth on Annex A attached hereto (each a " **Mortgaged Property**") in favor of the Collateral Agent for the benefit of the Trustee and the holders of the Offered Securities) executed by the Issuers and such Second Lien Security Instruments shall be in form and substance satisfactory to the Purchasers and shall be in full force and effect at all times from and after the Closing Date.

(i) The Collateral Agent shall have received proper forms of UCC financing statements (the " **Financing Statements**") under Article 9 of the Uniform Commercial Code in each applicable jurisdiction (the " **UCC**") to be filed as soon as reasonably practicable in the jurisdiction of incorporation of each of the Issuers, desirable to perfect the security interests purported to be created by the Security Agreement in favor of the Collateral Agent for the benefit of the Trustee and the holders of the Offered Securities.

(j) The Purchasers shall have received a completed Perfection Certificate (as defined in the credit agreement dated the Closing Date among the Company, the Guarantors, Credit Suisse First Boston, acting through its Cayman Islands Branch, Fleet Capital Corporation and Goldman Sachs Credit Partners, L.P. (the "**Credit Agreement**")) dated the Closing Date and signed by an executive officer or chief financial officer of the Company, together with all attachments contemplated thereby.

(k) Each of the Issuers shall obtain, on the Closing Date, certified copies of Requests for Information or Copies (Form UCC-11), or equivalent reports, listing all judgment liens, tax liens or effective financing statements that name any of the Issuers, as debtor and that are filed in the filling offices in each jurisdiction as may be necessary to perfect the security interests purported to be created by the Security Agreement, together with copies of such other financing statements (none of which shall cover the Collateral except to the extent evidencing Permitted Liens or for which the Collateral Agent shall

receive termination statements (Form UCC-3 or such other termination statements as shall be required by local law) fully executed (to the extent necessary) for filing).

(l) The Purchasers shall have received fully executed counterparts of Mortgages which Mortgages shall cover the Mortgaged Property owned or leased by any of the Issuers as are designated on Annex A hereto, together with evidence that counterparts of the Mortgages have been delivered to the title insurance company insuring the lien of such Mortgages for recording in all places to the extent necessary or, in the reasonable opinion of the Purchasers, desirable to effectively create a valid and enforceable mortgage lien on each Mortgaged Property in favor of the Collateral Agent for the benefit of the Trustee and the holders of the Offered Securities, securing the Obligations (as defined in the Indenture) under the Indenture and the other Senior Second Lien Notes Documents (as defined in the Security Agreement) (provided that in jurisdictions that impose mortgage recording taxes, such Mortgages shall not secure indebtedness in an amount exceeding 100% of the fair market value of such real property, as reasonably determined, in good faith, by the Issuers and reasonably acceptable to the Purchasers), subject to (i) those liens created by the Issuer for the benefit of the Bank Creditors (as defined in the Security Agreement), (ii) those liens, encumbrances, hypothecs and other matters affecting title to such Mortgaged Property and found reasonably acceptable by the Purchasers, (iii) as to any particular real property at any time, such easements, encroachments, covenants, rights of way, minor defects, irregularities or encumbrances on title which could not reasonably be expected to materially impair such Mortgaged Property for the purpose for which it is held by the mortgagor or grantor thereof, or the liens or hypothec held by the Collateral Agent, (iv) zoning and other municipal ordinances which are not violated in any material respect by the existing improvements and the present use made by the mortgagor or grantor thereof of the premises, (v) general real estate taxes and assessments not yet delinquent, and (vi) such other similar items as the Purchasers may consent to (such consent not to be unreasonably withheld) (the liens described in clauses (i) through (v) of this sentence, collectively, the " **Permitted Encumbrances**").

(m) The Purchasers shall have received, with respect to each Mortgage intended to encumber a Mortgaged Property, a policy or policies of title insurance (or commitments to issue such a policy or policies) insuring (or committing to insure) the lien of such Mortgage as a valid and enforceable mortgage lien on the Mortgaged Property or Properties described therein, in an aggregate amount of $187,500,000 allocated among such Mortgaged Properties in the manner set forth in Annex B hereto, (such policies collectively, the "**Mortgage Policies**") issued by such title insurers, which reasonably assures the Collateral Agent that the Mortgages on such Mortgaged Properties are valid and enforceable mortgage liens on the respective Mortgaged Properties, free and clear of all defects and encumbrances except Permitted Encumbrances and such Mortgage Policies shall otherwise be in form and substance reasonably satisfactory to the Purchasers and shall include, as appropriate, to the extent available at commercially reasonably rates, a "tie-in" or "cluster" endorsement, if available under applicable law (*i.e*., policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), and have been supplemented by such endorsements (or where such endorsements are not available, opinions of special counsel, architects or other professionals reasonably acceptable to the Collateral Agent)

as shall be reasonably requested by the Collateral Agent, including endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, revolving credit, doing business, non-imputation, public road access, survey for each Surveyed Property (as defined below), variable rate, environmental lien, subdivision, separate tax lot revolving credit, so-called comprehensive coverage over covenants and restrictions and for any and all other matters that the Collateral Agent may request, shall not include an exception for mechanics' liens or creditors' rights, and shall provide for affirmative insurance and such reinsurance (including direct access agreements) as the Purchasers may reasonably request.

(n) Except as provided in Section 14, the Purchasers shall have received surveys, in form and substance reasonably satisfactory to the Purchasers, of each Mortgaged Property designated as a "**Surveyed Property**" on Annex C hereto, certified in a manner reasonably satisfactory to the Collateral Agent by a licensed professional surveyor reasonably satisfactory to the Collateral Agent.

(o) The Purchasers shall have received duly authorized, fully executed, acknowledged and delivered subordination, nondisturbance and attornment agreements, assignment of leases, landlord consents, tenant estoppel certificates and such other documents relating to the Mortgages, but only to the extent delivered contemporaneously to the Collateral Agent pursuant to the Credit Agreement.

(p) The Purchasers shall have received proper fixture filings under the UCC on Form UCC-1 or the equivalent fully executed for filing under the UCC in the appropriate jurisdiction in which the Mortgaged Properties are located, desirable to perfect the security interests purported to be created by the Mortgage in favor of the Collateral Agent for the benefit of the Trustee and the holders of the Offered Securities.

(q) The Purchasers shall have received the opinions dated as of the Closing Date, addressed to the Purchasers, of (1) Davis, Malm & D'Agostine, P.C., special counsel to the Issuers or other special counsel or in-house counsel, as to the due authorization, execution and delivery of the Security Agreement by the Issuers and due perfection of liens created under the Security Agreement, and (2) local counsel in each jurisdiction where Mortgaged Property is located or where any Issuer is organized, each in form and substance reasonably satisfactory to the Purchasers.

(r) The Purchasers shall have received, with respect to each Mortgaged Property, if the area in which any improvements located on any Mortgaged Property is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), flood insurance, in favor of the Collateral Agent for the benefit of the Trustee and the holders of the Offered Securities, to the extent (including with respect to amounts) required in order to comply with applicable law.

Documents described as being "in the agreed form" are documents which are in the forms which have been initialed for the purpose of identification by Cahill Gordon & Reindel LLP,

copies of which are held by the Company and the Purchasers, with such changes as the Purchasers may approve.

The Company will furnish the Purchasers with such conformed copies of such opinions, certificates, letters and documents as the Purchasers reasonably request. The Purchasers may in their sole discretion waive on behalf of the Purchasers compliance with any conditions to the obligations of the Purchasers hereunder.

7. *Indemnification and Contribution*. (a) The Issuers will indemnify and hold harmless each Purchaser, its partners, directors and officers and each person, if any, who controls such Purchaser within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities, joint or several, to which such Purchaser may become subject, under the Securities Act or the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Offering Document, or any amendment or supplement thereto, or any related preliminary offering circular or the Exchange Act Reports, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, including any losses, claims, damages or liabilities arising out of or based upon any Issuer's failure to perform its obligations under Section 5(a) of this Agreement, and will reimburse each Purchaser for any legal or other expenses reasonably incurred by such Purchaser in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the Issuers will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by any Purchaser specifically for use therein, it being understood and agreed that the only such information consists of the information described as such in subsection (b) below.

(b) Each Purchaser will severally and not jointly indemnify and hold harmless each Issuer, its directors and officers and each person, if any, who controls such Issuer within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities to which such Issuer may become subject, under the Securities Act or the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Offering Document, or any amendment or supplement thereto, or any related preliminary offering circular, or arise out of or are based upon the omission or the alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Purchaser specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by the Issuers in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred, it being understood and agreed that the only such information furnished by any Purchaser consists of the following information in the Offering Document furnished on behalf of

each Purchaser: under the caption “Plan of Distribution” the third, ninth and tenth paragraphs; provided, however, that the Purchasers shall not be liable for any losses, claims, damages or liabilities arising out of or based upon any Issuer’s failure to perform its obligations under Section 5(a) of this Agreement.

(c) Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement includes (i) an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Issuers on the one hand and the Purchasers on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Issuers on the one hand and the Purchasers on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Issuers on the one hand and the Purchasers on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Issuers bear to the total discounts and commissions received by the Purchasers from the Issuers under this Agreement. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuers or the Purchasers and the parties’

relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Purchaser shall be required to contribute any amount in excess of the amount by which the total discounts, fees and commissions received by such Purchaser exceeds the amount of any damages which such Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. The Purchasers' obligations in this subsection (d) to contribute are several in proportion to their respective purchase obligations and not joint.

(e) The obligations of the Issuers under this Section shall be in addition to any liability which the Issuers may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Purchaser within the meaning of the Securities Act or the Exchange Act; and the obligations of the Purchasers under this Section shall be in addition to any liability which the respective Purchasers may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Issuer within the meaning of the Securities Act or the Exchange Act.

8. *Default of Purchasers.* If any Purchaser or Purchasers default in their obligations to purchase Offered Securities hereunder and the aggregate principal amount Offered Securities that such defaulting Purchaser or Purchasers agreed but failed to purchase does not exceed 10% of the total principal amount of Offered Securities, the Purchasers may make arrangements satisfactory to the Company for the purchase of such Offered Securities by other persons, including any of the Purchasers, but if no such arrangements are made by the Closing Date, the non-defaulting Purchasers shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Offered Securities that such defaulting Purchasers agreed but failed to purchase. If any Purchaser or Purchasers so default and the aggregate principal amount of Offered Securities with respect to which such default or defaults occur exceeds 10% of the total principal amount of Offered Securities and arrangements satisfactory to the Purchasers and the Company for the purchase of such Offered Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Purchaser or the Company, except as provided in Section 9. As used in this Agreement, the term "Purchaser" includes any person substituted for a Purchaser under this Section. Nothing herein will relieve a defaulting Purchaser from liability for its default.

9. *Survival of Certain Representations and Obligations.* The respective indemnities, agreements, representations, warranties and other statements of the Issuers or their officers and of the several Purchasers set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Purchaser, any Issuer or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities . If this Agreement is terminated pursuant to Section 8 or if for any reason the purchase of the Offered Securities by the Purchasers is not consummated, the Company shall remain responsible for the expenses to be paid or reimbursed by it pursuant to Section 5 and the respective obligations of the Issuers and the Purchasers pursuant to Section 7 shall remain in effect.

If the purchase of the Offered Securities by the Purchasers is not consummated for any reason other than solely because of the termination of this Agreement pursuant to Section 8, the Company will reimburse the Purchasers for all out-of-pocket expenses (including fees and disbursements of counsel) reasonably incurred by them in connection with the offering of the Offered Securities.

10. *Notices.* All communications hereunder will be in writing and, if sent to the Purchasers will be mailed, delivered or telegraphed and confirmed to the Purchasers, at Credit Suisse First Boston LLC, Eleven Madison Avenue, New York, N.Y. 10010-3629, Attention: Transactions Advisory Group, and Goldman, Sachs & Co., 85 Broad Street, New York, N.Y. 10004, Attention: Prospectus Department, or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at Clean Harbors, Inc. 1501 Washington St., P.O. Box 859 048, Braintree, MA 02185, Attention: Mark Burgess; provided, however, that any notice to a Purchaser pursuant to Section 7 will be mailed, delivered or telegraphed and confirmed to such Purchaser.

11. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the controlling persons referred to in Section 7, and no other person will have any right or obligation hereunder, except that holders of Offered Securities shall be entitled to enforce the agreements for their benefit contained in the second and third sentences of Section 5(b) hereof against the Company as if such holders were parties thereto.

12. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

13. *Applicable Law*. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to principles of conflicts of laws.

The Issuers hereby submit to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

14. *Post Closing Matters Relating to Collateral.* The Issuers shall obtain and deliver to Collateral Agent, within sixty business days after the Closing Date, unless waived or extended by Collateral Agent in its sole discretion (x) a survey for the Surveyed Properties located at 660 Lenfest Road, San Jose, Ca; Highway 169 North Industrial Park, Coffeyville, KS; Hwy 1112 (2029 Bayou Plaquemine Road), Rayne, LA; 32655 Gracie Lane, Plaquemine, LA; Route 322 & I-295 (PO Box 337), Bridgeport, NJ; 1200 Marietta Way, Sparks, NV; 2900 Rockefeller Ave., Cleveland, OH, 1672 E. Highland Road, Twinsburg, OH; 5324 W. 46th Street South, Tulsa, OK; and 4105 Whittaker Ave., Philadelphia, PA and (y) such affidavits or other documents requested by the title company, each in form and substance suitable to the title company to induce it to remove the standard survey exceptions from the Mortgage Policies and issue survey related endorsements.

If the foregoing is in accordance with the Purchasers' understanding of our agreement, kindly sign and return to us one of the counterparts hereof, whereupon it will become a binding agreement between the Issuers and the several Purchasers in accordance with its terms.

Very truly yours,

CLEAN HARBORS, INC.

By: /S/ STEPHEN MOYNIHAN
Name: STEPHEN MOYNIHAN
Title: SENIOR VICE PRESIDENT

ALTAIR DISPOSAL SERVICES, LLC
BATON ROUGE DISPOSAL, LLC
BRIDGEPORT DISPOSAL, LLC
CH INTERNATIONAL HOLDINGS, INC.
CLEAN HARBORS ANDOVER, LLC
CLEAN HARBORS ANTIOCH, LLC
CLEAN HARBORS ARAGONITE, LLC
CLEAN HARBORS ARIZONA, LLC
CLEAN HARBORS BATON ROUGE, LLC
CLEAN HARBORS BDT, LLC
CLEAN HARBORS BUTTONWILLOW, LLC
CLEAN HARBORS CHATTANOOGA, LLC
CLEAN HARBORS COFFEYVILLE, LLC
CLEAN HARBORS COLFAX, LLC
CLEAN HARBORS DEER PARK, L.P.
CLEAN HARBORS DEER TRAIL, LLC
CLEAN HARBORS DISPOSAL SERVICES, INC.
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.
CLEAN HARBORS FINANCIAL SERVICES COMPANY
CLEAN HARBORS FLORIDA, LLC
CLEAN HARBORS GRASSY MOUNTAIN, LLC
CLEAN HARBORS KANSAS, LLC
CLEAN HARBORS KINGSTON FACILITY CORPORATION
CLEAN HARBORS LAPORTE, L.P.
CLEAN HARBORS LAUREL, LLC
CLEAN HARBORS LONE MOUNTAIN, LLC
CLEAN HARBORS LONE STAR CORP.
CLEAN HARBORS LOS ANGELES, LLC
CLEAN HARBORS (MEXICO), INC.
CLEAN HARBORS OF BALTIMORE, INC.
CLEAN HARBORS OF BRAINTREE, INC.
CLEAN HARBORS OF CONNECTICUT, INC.
CLEAN HARBORS OF NATICK, INC.
CLEAN HARBORS OF TEXAS, LLC
CLEAN HARBORS PECATONICA, LLC
CLEAN HARBORS PLAQUEMINE, LLC
CLEAN HARBORS PPM, LLC
CLEAN HARBORS REIDSVILLE, LLC
CLEAN HARBORS SAN JOSE, LLC
CLEAN HARBORS SERVICES, INC.
CLEAN HARBORS TENNESSEE, LLC
CLEAN HARBORS WESTMORLAND, LLC
CLEAN HARBORS WHITE CASTLE, LLC

CROWLEY DISPOSAL, LLC
DISPOSAL PROPERTIES, LLC
GSX DISPOSAL, LLC
HARBOR INDUSTRIAL SERVICES TEXAS, L.P.
HARBOR MANAGEMENT CONSULTANTS, INC.
HILLIARD DISPOSAL, LLC
MURPHY'S WASTE OIL SERVICE, INC.
NORTHEAST CASUALTY REAL PROPERTY, LLC
ROEBUCK DISPOSAL, LLC
SAWYER DISPOSAL SERVICES, LLC
SERVICE CHEMICAL, LLC
SPRING GROVE RESOURCE RECOVERY, INC.
TULSA DISPOSAL, LLC

By: /S/ STEPHEN MOYNIHAN
Name:STEPHEN MOYNIHAN
Title: SENIOR VICE PRESIDENT

The foregoing Purchase Agreement
is hereby confirmed and accepted
as of the date first above written.

CREDIT SUISSE FIRST BOSTON LLC

By: /S/ DOUGLAS A. CRUIKSHANK
Name: DOUGLAS A. CRUIKSHANK
Title: MANAGING DIRECTOR

/S/ GOLDMAN, SACHS & CO.
(Goldman, Sachs & Co.)

SCHEDULE A

Manager	Principal Amount of Offered Securities
Credit Suisse First Boston LLC	$ 105,000,000
Goldman, Sachs & Co.	45,000,000
Total	$ 150,000,000

SCHEDULE B

Subsidiaries of the Company

Name	Jurisdiction
510127 N.B. Inc.	New Brunswick
Altair Disposal Services, LLC	Delaware
Baton Rouge Disposal, LLC	Delaware
Bridgeport Disposal, LLC	Delaware
CH Canada GP, Inc.	Canada
CH Canada Holdings Corp.	Nova Scotia
CH International Holdings, Inc.	Delaware
Clean Harbors Andover, LLC	Delaware
Clean Harbors Antioch, LLC	Delaware
Clean Harbors Aragonite, LLC	Delaware
Clean Harbors Arizona, LLC	Delaware
Clean Harbors Baton Rouge, LLC	Delaware
Clean Harbors BDT, LLC	Delaware
Clean Harbors Buttonwillow, LLC	Delaware
Clean Harbors Canada, Inc.	New Brunswick
Clean Harbors Canada LP	Ontario
Clean Harbors Chattanooga, LLC	Delaware
Clean Harbors Coffeyville, LLC	Delaware
Clean Harbors Colfax, LLC	Delaware
Clean Harbors Deer Park, L.P.	Delaware
Clean Harbors Deer Trail, LLC	Delaware
Clean Harbors Disposal Services, Inc.	Delaware
Clean Harbors Environmental Services, Inc.	Massachusetts
Clean Harbors Financial Services Company	Massachusetts
Clean Harbors Florida, LLC	Delaware
Clean Harbors Grassy Mountain, LLC	Delaware
Clean Harbors Kansas, LLC	Delaware
Clean Harbors Kingston Facility Corporation	Massachusetts
Clean Harbors LaPorte, L.P.	Delaware
Clean Harbors Laurel, LLC	Delaware
Clean Harbors Lone Mountain, LLC	Delaware
Clean Harbors Lone Star Corp. (CHLSC)	Delaware
Clean Harbors Los Angeles, LLC	Delaware
Clean Harbors Mercier Inc./Services Environnementaux Clean Harbors Mercier, Inc.	Quebec
Clean Harbors (Mexico), Inc.	Delaware
Clean Harbors of Baltimore, Inc.	Pennsylvania
Clean Harbors of Braintree, Inc.	Massachusetts
Clean Harbors of Connecticut, Inc.,	Connecticut
Clean Harbors of Natick, Inc.	Massachusetts
Clean Harbors of Texas, LLC	Delaware

Clean Harbors Pecatonica, LLC	Delaware
Clean Harbors Plaquemine, LLC	Delaware
Clean Harbors PPM, LLC	Delaware
Clean Harbors Quebec, Inc./Services environnementaux Clean Harbors Quebec, Inc.	Quebec
Clean Harbors Reidsville, LLC	Delaware
Clean Harbors San Jose, LLC	Delaware
Clean Harbors Services, Inc.	Massachusetts
Clean Harbors Tennessee, LLC	Delaware
Clean Harbors Westmorland, LLC	Delaware
Clean Harbors White Castle, LLC	Delaware
Crowley Disposal, LLC	Delaware
Disposal Properties, LLC	Delaware
GSX Disposal, LLC	Delaware
Harbor Industrial Services Texas, L.P.	Delaware
Harbor Management Consultants, Inc.	Massachusetts
Hilliard Disposal, LLC	Delaware
Laidlaw Environmental Services de Mexico S.A. de C.V.	Chihuahua, Mexico
Murphy’s Waste Oil Service, Inc.	Massachusetts
Northeast Casualty Real Property, LLC	Delaware
Northeast Casualty Risk Retention Group, Inc.	Vermont
Roebuck Disposal, LLC	Delaware
Sawyer Disposal Services, LLC	Delaware
Service Chemical, LLC	Delaware
SK D’Incineration Inc. (inactive)	Quebec
Spring Grove Resource Recovery, Inc.	Delaware
Tulsa Disposal, LLC	Delaware

ANNEX A

Real Property

Property	City/Town	State
5756 Alba Street	Los Angeles	CA
1021 Berressa Road	San Jose	CA
660 Lenfest Road	San Jose	CA
51 Broderick Road	Bristol	CT
Highway 169 North Industrial Park	Coffeyville	KS
2549 N. New York Street	Wichita	KS
Hwy 1112(2029 Bayou Plaquemine Road)	Rayne	LA
32655 Gracie Lane	Plaquemine	LA
1 Hill Avenue	Braintree	MA
30 Joseph Street	Kingston	MA
607/609 Pleasant Street	Weymouth	MA
1910 Russell Street	Baltimore	MD
3527 Whiskey Bottom Road	Laurel	MD
17 Main Street	S. Portland	ME
208 Watlington Industrial Drive	Reidsville	NC
HC 54, Box 2B, 2247 S. Hwy 71	Kimball	NE
Route 322 & I-295 (PO Box 337)	Bridgeport	NJ
1200 Marietta Way	Sparks	NV
4879 Spring Grove Avenue	Cincinnati	OH
2900 Rockefeller Avenue	Cleveland	OH
1672 E. Highland Road	Twinsburg	OH
5324 W. 46th Street South	Tulsa	OK
4105 Whittaker Avenue	Philadelphia	PA
2815 Old Greenbrier Pike	Greenbrier	TN
2027 Battleground Road	Deer Park	TX
500 Battleground Road	LaPorte	TX
11600 N. Aptus Road, Exit 56	Aragonite	UT
3.5 Miles S. of Mile Post 49 on I-80	Clive	UT

ANNEX B

Mortgage Policies

Property	City/Town	State	Title Insurance Values
5756 Alba Street	Los Angeles	CA	$ 2,997,150
1021 Berressa Road	San Jose	CA	$ 2,122,981
660 Lenfest Road	San Jose	CA	$ 1,138,071
51 Broderick Road	Bristol	CT	$ 2,547,578
Highway 169 North Industrial Park	Coffeyville	KS	$ 2,497,625
2549 N. New York Street	Wichita	KS	$ 3,153,172
Hwy 1112 (2029 Bayou Plaquemine Road)	Rayne	LA	$ 919,491
32655 Gracie Lane	Plaquemine	LA	$ 1,440,906
1 Hill Avenue	Braintree	MA	$ 5,838,309
30 Joseph Street	Kingston	MA	$ 666,012
607/609 Pleasant Street	Weymouth	MA	$ 1,273,173
1910 Russell Street	Baltimore	MD	$ 5,295,613
3527 Whiskey Bottom Road	Laurel	MD	$ 1,465,001
17 Main Street	S. Portland	ME	$ 1,586,571
208 Watlington Industrial Drive	Reidsville	NC	$ 3,455,195
HC 54, Box 2B, 2247 S. Hwy 71	Kimball	NE	$ 27,473,876
Route 322 & I-295 (PO Box 337)	Bridgeport	NJ	$ 7,378,983
1200 Marietta Way	Sparks	NV	$ 530,139
4879 Spring Grove Avenue	Cincinnati	OH	$ 5,297,246
2900 Rockefeller Avenue	Cleveland	OH	$ 3,403,721
1672 E. Highland Road	Twinsburg	OH	$ 868,489
5324 W. 46th Street South	Tulsa	OK	$ 1,038,902
4105 Whittaker Avenue	Philadelphia	PA	$ 649,632
2815 Old Greenbrier Pike	Greenbrier	TN	$ 706,601
2027 Battleground Road	Deer Park	TX	$ 55,063,167
500 Battleground Road	LaPorte	TX	$ 1,380,728
11600 N. Aptus Road, Exit 56	Aragonite	UT	$ 41,292,390
3.5 Miles S. of Mile Post 49 on I-80	Clive	UT	$ 6,019,277

ANNEX C

Surveyed Property

Property	City/Town	State
5756 Alba Street	Los Angeles	CA
1021 Berressa Road	San Jose	CA
660 Lenfest Road	San Jose	CA
51 Broderick Road	Bristol	CT
Highway 169 North Industrial Park	Coffeyville	KS
2549 N. New York Street	Wichita	KS
Hwy 1112(2029 Bayou Plaquemine Road)	Rayne	LA
32655 Gracie Lane	Plaquemine	LA
1 Hill Avenue	Braintree	MA
30 Joseph Street	Kingston	MA
607/609 Pleasant Street	Weymouth	MA
1910 Russell Street	Baltimore	MD
3527 Whiskey Bottom Road	Laurel	MD
17 Main Street	S. Portland	ME
208 Watlington Industrial Drive	Reidsville	NC
HC 54, Box 2B, 2247 S. Hwy 71	Kimball	NE
Route 322 & I-295 (PO Box 337)	Bridgeport	NJ
1200 Marietta Way	Sparks	NV
4879 Spring Grove Avenue	Cincinnati	OH
2900 Rockefeller Avenue	Cleveland	OH
1672 E. Highland Road	Twinsburg	OH
5324 W. 46th Street South	Tulsa	OK
4105 Whittaker Avenue	Philadelphia	PA
2815 Old Greenbrier Pike	Greenbrier	TN
2027 Battleground Road	Deer Park	TX
500 Battleground Road	LaPorte	TX
11600 N. Aptus Road, Exit 56	Aragonite	UT
3.5 Miles S. of Mile Post 49 on I-80	Clive	UT

Exhibit 4.31

$150,000,000

CLEAN HARBORS, INC.

11¼% Senior Secured Notes due 2012

REGISTRATION RIGHTS AGREEMENT

June 30, 2004

Credit Suisse First Boston LLC
Goldman, Sachs & Co.
c/o Credit Suisse First Boston LLC
Eleven Madison Avenue
New York, New York 10010-3629

Dear Sirs:

Clean Harbors, Inc., a Massachusetts corporation (the "Issuer"), proposes to issue and sell to Credit Suisse First Boston LLC and Goldman, Sachs & Co. (collectively, the "Initial Purchasers"), upon the terms set forth in a purchase agreement of even date herewith (the "Purchase Agreement"), $150,000,000 aggregate principal amount of its 11¼% Senior Secured Notes due 2012 (the "Initial Securities") to be unconditionally guaranteed (the "Guaranties") by the guarantors listed on Schedule A hereto (the "Guarantors" and together with the Issuer, the "Company"). The Initial Securities will be issued pursuant to an Indenture, dated as of June 30, 2004 (the "Indenture") among the Issuer, the Guarantors named therein and U.S. Bank National Association (the "Trustee"). As an inducement to the Initial Purchasers, the Company agrees with the Initial Purchasers, for the benefit of the holders of the Initial Securities (including, without limitation, the Initial Purchasers), the Exchange Securities (as defined below) and the Private Exchange Securities (as defined below) (collectively the "Holders"), as follows:

1. *Registered Exchange Offer*. The Company shall, at its own cost, prepare and, not later than 12 months after (or if the last day of the 12th month is not a business day, the first business day thereafter) the date of original issue of the Initial Securities (the "Issue Date"), file with the Securities and Exchange Commission (the "Commission") a registration statement (the "Exchange Offer Registration Statement") on an appropriate form under the Securities Act of 1933, as amended (the "Securities Act"), with respect to a proposed offer (the "Registered Exchange Offer") to the Holders of Transfer Restricted Securities (as defined in Section 6 hereof), who are not prohibited by any law or policy of the Commission from participating in the Registered Exchange Offer, to issue and deliver to such Holders, in exchange for the Initial Securities, a like aggregate principal amount of debt securities (the "Exchange Securities") of the Company issued under the Indenture and identical in all material respects to the Initial Securities (except for the transfer restrictions relating to the Initial Securities and the provisions relating to the matters described in Section 6 hereof) that would be registered under the Securities Act. The Company shall use its best efforts to cause such Exchange Offer Registration Statement to become effective under the Securities Act within 15 months (or if the last day of the 15th month is not a

business day, the first business day thereafter) after the Issue Date of the Initial Securities and shall keep the Exchange Offer Registration Statement effective for not less than 20 business days (or longer, if required by applicable law) after the date notice of the Registered Exchange Offer is mailed to the Holders (such period being called the "Exchange Offer Registration Period").

If the Company effects the Registered Exchange Offer, the Company will be entitled to close the Registered Exchange Offer 20 business days after the commencement thereof; *provided* that the Company has accepted all the Initial Securities theretofore validly tendered in accordance with the terms of the Registered Exchange Offer.

Following the declaration of the effectiveness of the Exchange Offer Registration Statement, the Company shall promptly commence the Registered Exchange Offer, it being the objective of such Registered Exchange Offer to enable each Holder of Transfer Restricted Securities (as defined in Section 6 hereof) electing to exchange the Initial Securities for Exchange Securities (assuming that such Holder is not an affiliate of the Company within the meaning of the Securities Act, acquires the Exchange Securities in the ordinary course of such Holder's business and has no arrangements with any person to participate in the distribution of the Exchange Securities and is not prohibited by any law or policy of the Commission from participating in the Registered Exchange Offer) to trade such Exchange Securities from and after their receipt without any limitations or restrictions under the Securities Act and without material restrictions under the securities laws of the several states of the United States.

The Company acknowledges that, pursuant to current interpretations by the Commission's staff of Section 5 of the Securities Act, in the absence of an applicable exemption therefrom, (i) each Holder which is a broker-dealer electing to exchange Securities, acquired for its own account as a result of market making activities or other trading activities, for Exchange Securities (an "Exchanging Dealer"), is required to deliver a prospectus containing the information set forth in (a) Annex A hereto on the cover, (b) Annex B hereto in the "Exchange Offer Procedures" section and the "Purpose of the Exchange Offer" section, and (c) Annex C hereto in the "Plan of Distribution" section of such prospectus in connection with a sale of any such Exchange Securities received by such Exchanging Dealer pursuant to the Registered Exchange Offer and (ii) an Initial Purchaser that elects to sell Exchange Securities acquired in exchange for Securities constituting any portion of an unsold allotment is required to deliver a prospectus containing the information required by Items 507 or 508 of Regulation S-K under the Securities Act, as applicable, in connection with such sale.

The Company shall use its best efforts to keep the Exchange Offer Registration Statement effective and to amend and supplement the prospectus contained therein, in order to permit such prospectus to be lawfully delivered by all persons subject to the prospectus delivery requirements of the Securities Act for such period of time as such persons must comply with such requirements in order to resell the Exchange Securities; *provided*, *however*, that (i) in the case where such prospectus and any amendment or supplement thereto must be delivered by an Exchanging Dealer or an Initial Purchaser, such period shall be the lesser of 180 days and the date on which all Exchanging Dealers and the Initial Purchasers have sold all Exchange Securities held by them (unless such period is extended pursuant to Section 3(j) below) and (ii) the Company shall make such prospectus and any amendment or supplement thereto, available to

any broker-dealer for use in connection with any resale of any Exchange Securities for a period of not less than 180 days after the consummation of the Registered Exchange Offer.

If, upon consummation of the Registered Exchange Offer, any Initial Purchaser holds Initial Securities acquired by it as part of its initial distribution, the Company, simultaneously with the delivery of the Exchange Securities pursuant to the Registered Exchange Offer, shall issue and deliver to such Initial Purchaser upon the written request of such Initial Purchaser, in exchange (the "Private Exchange") for the Initial Securities held by such Initial Purchaser, a like principal amount of debt securities of the Company issued under the Indenture and identical in all material respects (including the existence of restrictions on transfer under the Securities Act and the securities laws of the several states of the United States, but excluding provisions relating to the matters described in Section 6 hereof) to the Initial Securities (the "Private Exchange Securities"). The Initial Securities, the Exchange Securities and the Private Exchange Securities are herein collectively called the "Securities".

In connection with the Registered Exchange Offer, the Company shall:

(a) mail to each Holder a copy of the prospectus forming part of the Exchange Offer Registration Statement, together with an appropriate letter of transmittal and related documents;

(b) keep the Registered Exchange Offer open for not less than 20 business days (or longer, if required by applicable law) after the date notice thereof is mailed to the Holders;

(c) utilize the services of a depositary for the Registered Exchange Offer with an address in the Borough of Manhattan, The City of New York, which may be the Trustee or an affiliate of the Trustee;

(d) permit Holders to withdraw tendered Securities at any time prior to the close of business, New York time, on the last business day on which the Registered Exchange Offer shall remain open; and

(e) otherwise comply with all applicable laws.

As soon as practicable after the close of the Registered Exchange Offer or the Private Exchange, as the case may be, the Company shall:

(x) accept for exchange all the Securities validly tendered and not withdrawn pursuant to the Registered Exchange Offer and the Private Exchange;

(y) deliver to the Trustee for cancellation all the Initial Securities so accepted for exchange; and

(z) cause the Trustee to authenticate and deliver promptly to each Holder of the Initial Securities, Exchange Securities or Private Exchange Securities, as the case may

be, equal in principal amount to the Initial Securities of such Holder so accepted for exchange.

The Indenture will provide that the Exchange Securities will not be subject to the transfer restrictions set forth in the Indenture and that all the Securities will vote and consent together on all matters as one class and that none of the Securities will have the right to vote or consent as a class separate from one another on any matter.

Interest on each Exchange Security and Private Exchange Security issued pursuant to the Registered Exchange Offer and in the Private Exchange will accrue from the last interest payment date on which interest was paid on the Initial Securities surrendered in exchange therefor or, if no interest has been paid on the Initial Securities, from the date of original issue of the Initial Securities.

Each Holder participating in the Registered Exchange Offer shall be required to represent to the Company that at the time of the consummation of the Registered Exchange Offer (i) any Exchange Securities received by such Holder will be acquired in the ordinary course of business, (ii) such Holder will have no arrangements or understanding with any person to participate in the distribution of the Securities or the Exchange Securities within the meaning of the Securities Act, (iii) such Holder is not an "affiliate," as defined in Rule 405 of the Securities Act, of the Company or if it is an affiliate, such Holder will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable, (iv) if such Holder is not a broker-dealer, that it is not engaged in, and does not intend to engage in, the distribution of the Exchange Securities and (v) if such Holder is a broker-dealer, that it will receive Exchange Securities for its own account in exchange for Initial Securities that were acquired as a result of market-making activities or other trading activities and that it will be required to acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Securities.

Notwithstanding any other provisions hereof, the Company will ensure that (i) any Exchange Offer Registration Statement and any amendment thereto and any prospectus forming part thereof and any supplement thereto complies in all material respects with the Securities Act and the rules and regulations thereunder, (ii) any Exchange Offer Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (iii) any prospectus forming part of any Exchange Offer Registration Statement, and any supplement to such prospectus, does not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

2. *Shelf Registration*. If, (i) because of any change in law or in applicable interpretations thereof by the staff of the Commission, the Company is not permitted to effect a Registered Exchange Offer, as contemplated by Section 1 hereof, (ii) the Registered Exchange Offer is not consummated within 16 months of the Issue Date, (iii) within 30 days following consummation of the Registered Exchange Offer, any Initial Purchaser so requests with respect to the Initial Securities (or the Private Exchange Securities) not eligible to be exchanged for Exchange Securities in the Registered Exchange Offer and held by it following consummation of

the Registered Exchange Offer or (iv) any Holder (other than an Exchanging Dealer) is not eligible to participate in the Registered Exchange Offer or, in the case of any Holder (other than an Exchanging Dealer) that participates in the Registered Exchange Offer, such Holder does not receive freely tradeable Exchange Securities on the date of the exchange, the Company shall take the following actions:

(a) The Company shall, at its cost, as promptly as practicable (but in no event more than 30 days after so required or requested pursuant to this Section 2) file with the Commission and thereafter shall use its best efforts to cause to be declared effective a registration statement (the "Shelf Registration Statement" and, together with the Exchange Offer Registration Statement, a "Registration Statement") on an appropriate form under the Securities Act relating to the offer and sale of the Transfer Restricted Securities (as defined in Section 6 hereof) by the Holders thereof from time to time in accordance with the methods of distribution set forth in the Shelf Registration Statement and Rule 415 under the Securities Act (hereinafter, the "Shelf Registration"); *provided*, *however*, that no Holder (other than an Initial Purchaser) shall be entitled to have the Securities held by it covered by such Shelf Registration Statement unless such Holder agrees in writing to be bound by all the provisions of this Agreement applicable to such Holder.

(b) The Company shall use its best efforts to keep the Shelf Registration Statement continuously effective in order to permit the prospectus included therein to be lawfully delivered by the Holders of the relevant Securities, for a period of two years (or for such longer period if extended pursuant to Section 3(j) below) from the date of its effectiveness or such shorter period that will terminate when all the Securities covered by the Shelf Registration Statement (i) have been sold pursuant thereto or (ii) are no longer restricted securities (as defined in Rule 144 under the Securities Act, or any successor rule thereof). The Company shall be deemed not to have used its best efforts to keep the Shelf Registration Statement effective during the requisite period if it voluntarily takes any action that would result in Holders of Securities covered thereby not being able to offer and sell such Securities during that period, unless such action is required by applicable law.

(c) Notwithstanding any other provisions of this Agreement to the contrary, the Company shall cause the Shelf Registration Statement and the related prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement, amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Securities Act and the rules and regulations of the Commission and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

3. *Registration Procedures*. In connection with any Shelf Registration contemplated by Section 2 hereof and, to the extent applicable, any Registered Exchange Offer contemplated by Section 1 hereof, the following provisions shall apply:

(a) The Company shall (i) furnish to each Initial Purchaser, prior to the filing thereof with the Commission, a copy of the Registration Statement and each amendment

thereof and each supplement, if any, to the prospectus included therein and, in the event that an Initial Purchaser (with respect to any portion of an unsold allotment from the original offering) is participating in the Registered Exchange Offer or the Shelf Registration Statement, the Company shall use its best efforts to reflect in each such document, when so filed with the Commission, such comments as such Initial Purchaser reasonably may propose; (ii) include the information set forth in Annex A hereto on the cover, in Annex B hereto in the "Exchange Offer Procedures" section and the "Purpose of the Exchange Offer" section and in Annex C hereto in the "Plan of Distribution" section of the prospectus forming a part of the Exchange Offer Registration Statement and include the information set forth in Annex D hereto in the Letter of Transmittal delivered pursuant to the Registered Exchange Offer; (iii) if requested by an Initial Purchaser, include the information required by Items 507 or 508 of Regulation S-K under the Securities Act, as applicable, in the prospectus forming a part of the Exchange Offer Registration Statement; (iv) include within the prospectus contained in the Exchange Offer Registration Statement a section entitled "Plan of Distribution," reasonably acceptable to the Initial Purchasers, which shall contain a summary statement of the positions taken or policies made by the staff of the Commission with respect to the potential "underwriter" status of any broker-dealer that is the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of Exchange Securities received by such broker-dealer in the Registered Exchange Offer (a "Participating Broker-Dealer"), whether such positions or policies have been publicly disseminated by the staff of the Commission or such positions or policies, in the reasonable judgment of the Initial Purchasers based upon advice of counsel (which may be in-house counsel), represent the prevailing views of the staff of the Commission; and (v) in the case of a Shelf Registration Statement, include the names of the Holders, who propose to sell Securities pursuant to the Shelf Registration Statement, as selling securityholders.

(b) The Company shall give written notice to the Initial Purchasers, the Holders of the Securities and any Participating Broker-Dealer from whom the Company has received prior written notice that it will be a Participating Broker-Dealer in the Registered Exchange Offer (which notice pursuant to clauses (ii)-(v) hereof shall be accompanied by an instruction to suspend the use of the prospectus until the requisite changes have been made):

(i) when the Registration Statement or any amendment thereto has been filed with the Commission and when the Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the Commission for amendments or supplements to the Registration Statement or the prospectus included therein or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose;

(iv) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(v) of the happening of any event that requires the Company to make changes in the Registration Statement or the prospectus in order that the Registration Statement or the prospectus do not contain an untrue statement of a material fact nor omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the prospectus, in light of the circumstances under which they were made) not misleading.

(c) The Company shall make every reasonable effort to obtain the withdrawal at the earliest possible time, of any order suspending the effectiveness of the Registration Statement.

(d) The Company shall furnish to each Holder of Securities included within the coverage of the Shelf Registration, without charge, at least one copy of the Shelf Registration Statement and any post-effective amendment thereto, including financial statements and schedules, and, if the Holder so requests in writing, all exhibits thereto (including those, if any, incorporated by reference).

(e) The Company shall deliver to each Exchanging Dealer and each Initial Purchaser, and to any other Holder who so requests, without charge, at least one copy of the Exchange Offer Registration Statement and any post-effective amendment thereto, including financial statements and schedules, and, if any Initial Purchaser or any such Holder requests, all exhibits thereto (including those incorporated by reference).

(f) The Company shall, during the Shelf Registration Period, deliver to each Holder of Securities included within the coverage of the Shelf Registration, without charge, as many copies of the prospectus (including each preliminary prospectus) included in the Shelf Registration Statement and any amendment or supplement thereto as such person may reasonably request. The Company consents, subject to the provisions of this Agreement, to the use of the prospectus or any amendment or supplement thereto by each of the selling Holders of the Securities in connection with the offering and sale of the Securities covered by the prospectus, or any amendment or supplement thereto, included in the Shelf Registration Statement.

(g) The Company shall deliver to each Initial Purchaser, any Exchanging Dealer, any Participating Broker-Dealer and such other persons required to deliver a prospectus following the Registered Exchange Offer, without charge, as many copies of the final prospectus included in the Exchange Offer Registration Statement and any amendment or supplement thereto as such persons may reasonably request. The Company consents, subject to the provisions of this Agreement, to the use of the prospectus or any amendment or supplement thereto by any Initial Purchaser, if necessary, any Participating Broker-Dealer and such other persons required to deliver a prospectus following the Registered Exchange Offer in connection with the offering and sale of the Exchange Securities

covered by the prospectus, or any amendment or supplement thereto, included in such Exchange Offer Registration Statement.

(h) Prior to any public offering of the Securities, pursuant to any Registration Statement, the Company shall register or qualify or cooperate with the Holders of the Securities included therein and their respective counsel in connection with the registration or qualification of the Securities for offer and sale under the securities or "blue sky" laws of such states of the United States as any Holder of the Securities reasonably requests in writing and do any and all other acts or things necessary or advisable to enable the offer and sale in such jurisdictions of the Securities covered by such Registration Statement; *provided*, *however*, that the Company shall not be required to (i) qualify generally to do business in any jurisdiction where it is not then so qualified or (ii) take any action which would subject it to general service of process or to taxation in any jurisdiction where it is not then so subject.

(i) The Company shall cooperate with the Holders of the Securities to facilitate the timely preparation and delivery of certificates representing the Securities to be sold pursuant to any Registration Statement free of any restrictive legends and in such denominations and registered in such names as the Holders may request a reasonable period of time prior to sales of the Securities pursuant to such Registration Statement.

(j) Upon the occurrence of any event contemplated by paragraphs (ii) through (v) of Section 3(b) above during the period for which the Company is required to maintain an effective Registration Statement, the Company shall promptly prepare and file a post-effective amendment to the Registration Statement or a supplement to the related prospectus and any other required document so that, as thereafter delivered to Holders of the Securities or purchasers of Securities, the prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Initial Purchasers, the Holders of the Securities and any known Participating Broker-Dealer in accordance with paragraphs (ii) through (v) of Section 3(b) above to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Initial Purchasers, the Holders of the Securities and any such Participating Broker-Dealers shall suspend use of such prospectus, and the period of effectiveness of the Shelf Registration Statement provided for in Section 2(b) above and the Exchange Offer Registration Statement provided for in Section 1 above shall each be extended by the number of days from and including the date of the giving of such notice to and including the date when the Initial Purchasers, the Holders of the Securities and any known Participating Broker-Dealer shall have received such amended or supplemented prospectus pursuant to this Section 3(j).

(k) Not later than the effective date of the applicable Registration Statement, the Company will provide a CUSIP number for the Initial Securities, the Exchange Securities or the Private Exchange Securities, as the case may be, and provide the applicable trustee with printed certificates for the Initial Securities, the Exchange Securities or the

Private Exchange Securities, as the case may be, in a form eligible for deposit with The Depository Trust Company.

(l) The Company will comply with all rules and regulations of the Commission to the extent and so long as they are applicable to the Registered Exchange Offer or the Shelf Registration and will make generally available to its security holders (or otherwise provide in accordance with Section 11(a) of the Securities Act) an earnings statement satisfying the provisions of Section 11(a) of the Securities Act, no later than 45 days after the end of a 12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the Registration Statement, which statement shall cover such 12-month period.

(m) The Company shall cause the Indenture to be qualified under the Trust Indenture Act of 1939, as amended, in a timely manner and containing such changes, if any, as shall be necessary for such qualification. In the event that such qualification would require the appointment of a new trustee under the Indenture, the Company shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture.

(n) The Company may require each Holder of Securities to be sold pursuant to the Shelf Registration Statement to furnish to the Company such information regarding the Holder and the distribution of the Securities as the Company may from time to time reasonably require for inclusion in the Shelf Registration Statement, and the Company may exclude from such registration the Securities of any Holder that unreasonably fails to furnish such information within a reasonable time after receiving such request.

(o) The Company shall enter into such customary agreements (including, if requested, an underwriting agreement in customary form) and take all such other action, if any, as any Holder of the Securities shall reasonably request in order to facilitate the disposition of the Securities pursuant to any Shelf Registration.

(p) In the case of any Shelf Registration, the Company shall (i) make reasonably available for inspection by the Holders of the Securities, any underwriter participating in any disposition pursuant to the Shelf Registration Statement and any attorney, accountant or other agent retained by the Holders of the Securities or any such underwriter all relevant financial and other records, pertinent corporate documents and properties of the Company and (ii) cause the Company's officers, directors, employees, accountants and auditors to supply all relevant information reasonably requested by the Holders of the Securities or any such underwriter, attorney, accountant or agent in connection with the Shelf Registration Statement, in each case, as shall be reasonably necessary to enable such persons, to conduct a reasonable investigation within the meaning of Section 11 of the Securities Act; *provided*, *however*, that the foregoing inspection and information gathering shall be coordinated on behalf of the Initial Purchasers by you and on behalf of the other parties, by one counsel designated by and on behalf of such other parties as described in Section 4 hereof.

(q) In the case of any Shelf Registration, the Company, if requested by any Holder of Securities covered thereby, shall cause (i) its counsel to deliver an opinion and

updates thereof relating to the Securities in customary form addressed to such Holders and the managing underwriters, if any, thereof and dated, in the case of the initial opinion, the effective date of such Shelf Registration Statement (it being agreed that the matters to be covered by such opinion shall include, without limitation, the due incorporation and good standing of the Company and its subsidiaries; the qualification of the Company and its subsidiaries to transact business as foreign corporations; the due authorization, execution and delivery of the relevant agreement of the type referred to in Section 3(o) hereof; the due authorization, execution, authentication and issuance, and the validity and enforceability, of the applicable Securities; the absence of material legal or governmental proceedings involving the Company and its subsidiaries; the absence of governmental approvals required to be obtained in connection with the Shelf Registration Statement, the offering and sale of the applicable Securities, or any agreement of the type referred to in Section 3(o) hereof; the compliance as to form of such Shelf Registration Statement and any documents incorporated by reference therein and of the Indenture with the requirements of the Securities Act and the Trust Indenture Act, respectively; and, as of the date of the opinion and as of the effective date of the Shelf Registration Statement or most recent post-effective amendment thereto, as the case may be, the absence from such Shelf Registration Statement and the prospectus included therein, as then amended or supplemented, and from any documents incorporated by reference therein of an untrue statement of a material fact or the omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any such documents, in the light of the circumstances existing at the time that such documents were filed with the Commission under the Exchange Act); (ii) its officers to execute and deliver all customary documents and certificates and updates thereof requested by any underwriters of the applicable Securities and (iii) its independent public accountants to provide to the selling Holders of the applicable Securities and any underwriter therefor a comfort letter in customary form and covering matters of the type customarily covered in comfort letters in connection with primary underwritten offerings, subject to receipt of appropriate documentation as contemplated, and only if permitted, by Statement of Auditing Standards No. 72.

(r) In the case of the Registered Exchange Offer, if requested by any Initial Purchaser or any known Participating Broker-Dealer, the Company shall cause (i) its counsel to deliver to such Initial Purchaser or such Participating Broker-Dealer a signed opinion in the form set forth in Section 6(c) of the Purchase Agreement with such changes as are customary in connection with the preparation of a Registration Statement and (ii) its independent public accountants to deliver to such Initial Purchaser or such Participating Broker-Dealer a comfort letter, in customary form, meeting the requirements as to the substance thereof as set forth in Section 6(a) of the Purchase Agreement, with appropriate date changes.

(s) If a Registered Exchange Offer or a Private Exchange is to be consummated, upon delivery of the Initial Securities by Holders to the Company (or to such other Person as directed by the Company) in exchange for the Exchange Securities or the Private Exchange Securities, as the case may be, the Company shall mark, or caused to be marked, on the Initial Securities so exchanged that such Initial Securities are being

canceled in exchange for the Exchange Securities or the Private Exchange Securities, as the case may be; in no event shall the Initial Securities be marked as paid or otherwise satisfied.

(t) The Company will use its best efforts to (a) if the Initial Securities have been rated prior to the initial sale of such Initial Securities, confirm such ratings will apply to the Securities covered by a Registration Statement, or (b) if the Initial Securities were not previously rated, cause the Securities covered by a Registration Statement to be rated with the appropriate rating agencies, if so requested by Holders of a majority in aggregate principal amount of Securities covered by such Registration Statement, or by the managing underwriters, if any.

(u) In the event that any broker-dealer registered under the Exchange Act shall underwrite any Securities or participate as a member of an underwriting syndicate or selling group or "assist in the distribution" (within the meaning of the Conduct Rules (the "Rules") of the National Association of Securities Dealers, Inc. ("NASD")) thereof, whether as a Holder of such Securities or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, the Company will assist such broker-dealer in complying with the requirements of such Rules, including, without limitation, by (i) if such Rules, including Rule 2720, shall so require, engaging a "qualified independent underwriter" (as defined in Rule 2720) to participate in the preparation of the Registration Statement relating to such Securities, to exercise usual standards of due diligence in respect thereto and, if any portion of the offering contemplated by such Registration Statement is an underwritten offering or is made through a placement or sales agent, to recommend the yield of such Securities, (ii) indemnifying any such qualified independent underwriter to the extent of the indemnification of underwriters provided in Section 5 hereof and (iii) providing such information to such broker-dealer as may be required in order for such broker-dealer to comply with the requirements of the Rules.

(v) The Company shall use its best efforts to take all other steps necessary to effect the registration of the Securities covered by a Registration Statement contemplated hereby.

4. *Registration Expenses*. The Company shall bear all fees and expenses incurred in connection with the performance of its obligations under Sections 1 through 3 hereof (including the reasonable fees and expenses, if any, of Cahill Gordon & Reindel LLP, counsel for the Initial Purchasers, incurred in connection with the Registered Exchange Offer), whether or not the Registered Exchange Offer or a Shelf Registration is filed or becomes effective, and, in the event of a Shelf Registration, shall bear or reimburse the Holders of the Securities covered thereby for the reasonable fees and disbursements of one firm of counsel designated by the Holders of a majority in principal amount of the Initial Securities covered thereby to act as counsel for the Holders of the Initial Securities in connection therewith.

5. *Indemnification*. (a) The Company agrees to indemnify and hold harmless each Holder of the Securities, any Participating Broker-Dealer and each person, if any, who controls such Holder or such Participating Broker-Dealer within the meaning of the Securities Act or the Exchange Act (each Holder, any Participating Broker-Dealer and such controlling

persons are referred to collectively as the "Indemnified Parties") from and against any losses, claims, damages or liabilities, joint or several, or any actions in respect thereof (including, but not limited to, any losses, claims, damages, liabilities or actions relating to purchases and sales of the Securities) to which each Indemnified Party may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in a Registration Statement or prospectus or in any amendment or supplement thereto or in any preliminary prospectus relating to a Shelf Registration, or arise out of, or are based upon, the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and shall reimburse, as incurred, the Indemnified Parties for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action in respect thereof; *provided*, *however*, that (i) the Company shall not be liable in any such case to the extent that such loss, claim, damage or liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in a Registration Statement or prospectus or in any amendment or supplement thereto or in any preliminary prospectus relating to a Shelf Registration in reliance upon and in conformity with written information pertaining to such Holder and furnished to the Company by or on behalf of such Holder specifically for inclusion therein and (ii) with respect to any untrue statement or omission or alleged untrue statement or omission made in any preliminary prospectus relating to a Shelf Registration Statement, the indemnity agreement contained in this subsection (a) shall not inure to the benefit of any Holder or Participating Broker-Dealer from whom the person asserting any such losses, claims, damages or liabilities purchased the Securities concerned, to the extent that a prospectus relating to such Securities was required to be delivered by such Holder or Participating Broker-Dealer under the Securities Act in connection with such purchase and any such loss, claim, damage or liability of such Holder or Participating Broker-Dealer results from the fact that there was not sent or given to such person, at or prior to the written confirmation of the sale of such Securities to such person, a copy of the final prospectus if the Company had previously furnished copies thereof to such Holder or Participating Broker-Dealer; *provided further*, *however*, that this indemnity agreement will be in addition to any liability which the Company may otherwise have to such Indemnified Party. The Company shall also indemnify underwriters, their officers and directors and each person who controls such underwriters within the meaning of the Securities Act or the Exchange Act to the same extent as provided above with respect to the indemnification of the Holders of the Securities if requested by such Holders.

(b) Each Holder of the Securities, severally and not jointly, will indemnify and hold harmless the Company and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act from and against any losses, claims, damages or liabilities or any actions in respect thereof, to which the Company or any such controlling person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in a Registration Statement or prospectus or in any amendment or supplement thereto or in any preliminary prospectus relating to a Shelf Registration, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein not misleading, but in each case only to the extent that the untrue statement or omission or alleged untrue statement or omission was

made in reliance upon and in conformity with written information pertaining to such Holder and furnished to the Company by or on behalf of such Holder specifically for inclusion therein; and, subject to the limitation set forth immediately preceding this clause, shall reimburse, as incurred, the Company for any legal or other expenses reasonably incurred by the Company or any such controlling person in connection with investigating or defending any loss, claim, damage, liability or action in respect thereof. This indemnity agreement will be in addition to any liability which such Holder may otherwise have to the Company or any of its controlling persons.

(c) Promptly after receipt by an indemnified party under this Section 5 of notice of the commencement of any action or proceeding (including a governmental investigation), such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 5, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve the indemnifying party from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and *provided further* that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof the indemnifying party will not be liable to such indemnified party under this Section 5 for any legal or other expenses, other than reasonable costs of investigation, subsequently incurred by such indemnified party in connection with the defense thereof. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action, and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 5 is unavailable or insufficient to hold harmless an indemnified party under subsections (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party on the other from the exchange of the Securities, pursuant to the Registered Exchange Offer, or (ii) if the allocation provided by the foregoing clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party or parties on the one hand and the indemnified party on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as any other relevant

equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or such Holder or such other indemnified party, as the case may be, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding any other provision of this Section 5(d), the Holders of the Securities shall not be required to contribute any amount in excess of the amount by which the net proceeds received by such Holders from the sale of the Securities pursuant to a Registration Statement exceeds the amount of damages which such Holders have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this paragraph (d), each person, if any, who controls such indemnified party within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such indemnified party and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Company.

(e) The agreements contained in this Section 5 shall survive the sale of the Securities pursuant to a Registration Statement and shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any indemnified party.

6. *Additional Interest Under Certain Circumstances*. (a) Additional interest (the "Additional Interest") with respect to the Initial Securities shall be assessed as follows if any of the following events occur (each such event in clauses (i) through (iv) below a "Registration Default":

(i) If by June 30, 2005, neither the Exchange Offer Registration Statement nor, if required in lieu thereof, a Shelf Registration Statement has been filed with the Commission;

(ii) If by September 30, 2005, neither the Exchange Offer Registration Statement nor, if required in lieu thereof, the Shelf Registration Statement is declared effective by the Commission;

(iii) If by October 30, 2005, the Registered Exchange offer is not consummated; or

(iv) If after either the Exchange Offer Registration Statement or the Shelf Registration Statement is declared effective (A) such Registration Statement thereafter ceases to be effective; or (B) such Registration Statement or the related prospectus ceases to be usable (except as permitted in paragraph (b)) in connection with resales of Transfer

Restricted Securities during the periods specified herein because either (1) any event occurs as a result of which the related prospectus forming part of such Registration Statement would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or (2) it shall be necessary to amend such Registration Statement or supplement the related prospectus, to comply with the Securities Act or the Exchange Act or the respective rules thereunder.

Additional Interest shall accrue on the Initial Securities over and above the interest set forth in the title of the Securities from and including the date on which any such Registration Default shall occur to but excluding the date on which all such Registration Defaults have been cured, at a rate of 0.25% per annum for the first 90-day period following the occurrence of a Registration Default. Such rate shall increase by an additional 0.25% per annum with respect to each subsequent 90-day period until all Registration Defaults have been cured, up to a maximum Additional Interest rate of 1.00% per annum.

(b) A Registration Default referred to in Section 6(a)(iv)(B) hereof shall be deemed not to have occurred and be continuing in relation to a Shelf Registration Statement or the related prospectus if (i) such Registration Default has occurred solely as a result of (x) the filing of a post-effective amendment to such Shelf Registration Statement to incorporate annual audited financial information with respect to the Company where such post-effective amendment is not yet effective and needs to be declared effective to permit Holders to use the related prospectus or (y) other material events, with respect to the Company that would need to be described in such Shelf Registration Statement or the related prospectus and (ii) in the case of clause (y), the Company is proceeding promptly and in good faith to amend or supplement such Shelf Registration Statement and related prospectus to describe such events; *provided*, *however*, that in any case if such Registration Default occurs for a continuous period in excess of 30 days, Additional Interest shall be payable in accordance with the above paragraph from the day such Registration Default occurs until such Registration Default is cured.

(c) Any amounts of Additional Interest due pursuant to clause (i), (ii), (iii) or (iv) of Section 6(a) above will be payable in cash on the regular interest payment dates with respect to the Initial Securities. The amount of Additional Interest will be determined by multiplying the applicable Additional Interest rate by the principal amount of the Initial Securities, multiplied by a fraction, the numerator of which is the number of days such Additional Interest rate was applicable during such period (determined on the basis of a 360-day year comprised of twelve 30-day months), and the denominator of which is 360.

(d) “Transfer Restricted Securities” means each Security until (i) the date on which such Transfer Restricted Security has been exchanged by a person other than a broker-dealer for a freely transferable Exchange Security in the Registered Exchange Offer, (ii) following the exchange by a broker-dealer in the Registered Exchange Offer of a Initial Security for an Exchange Note, the date on which such Exchange Note is sold to a purchaser who receives from such broker-dealer on or prior to the date of such sale a copy of the prospectus contained in the Exchange Offer Registration Statement, (iii) the date on which such Initial Security has been effectively registered under the Securities Act and disposed of in accordance with the Shelf

Registration Statement or (iv) the date on which such Initial Securities is distributed to the public pursuant to Rule 144 under the Securities Act or is saleable pursuant to Rule 144(k) under the Securities Act.

7. *Rules 144 and 144A*. The Company shall use its best efforts to file the reports required to be filed by it under the Securities Act and the Exchange Act in a timely manner and, if at any time the Company is not required to file such reports, it will, upon the request of any Holder of Initial Securities, make publicly available other information so long as necessary to permit sales of their securities pursuant to Rules 144 and 144A. The Company covenants that it will take such further action as any Holder of Initial Securities may reasonably request, all to the extent required from time to time to enable such Holder to sell Initial Securities without registration under the Securities Act within the limitation of the exemptions provided by Rules 144 and 144A (including the requirements of Rule 144A(d)(4)). The Company will provide a copy of this Agreement to prospective purchasers of Initial Securities identified to the Company by the Initial Purchasers upon request. Upon the request of any Holder of Initial Securities, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Company to register any of its securities pursuant to the Exchange Act.

8. *Underwritten Registrations*. If any of the Transfer Restricted Securities covered by any Shelf Registration are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will administer the offering ("Managing Underwriters") will be selected by the Holders of a majority in aggregate principal amount of such Transfer Restricted Securities to be included in such offering.

No person may participate in any underwritten registration hereunder unless such person (i) agrees to sell such person's Transfer Restricted Securities on the basis reasonably provided in any underwriting arrangements approved by the persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements.

9. *Miscellaneous*.

(a) *Amendments and Waivers*. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, except by the Company and the written consent of the Holders of a majority in principal amount of the Securities affected by such amendment, modification, supplement, waiver or consents.

(b) *Notices*. All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, first-class mail, facsimile transmission, or air courier which guarantees overnight delivery:

(1) if to a Holder of the Securities, at the most current address given by such Holder to the Company.

(2) if to the Initial Purchasers;

Credit Suisse First Boston LLC
Eleven Madison Avenue
New York, NY 10010-3629
Fax No.: (212) 325-8278
Attention: Transactions Advisory Group

and

Goldman, Sachs & Co.
85 Broad Street
New York, NY 10004
Fax No.: (212) 902-3000
Attention: Prospectus Department

with a copy to:

Cahill Gordon & Reindel LLP
80 Pine Street
New York, NY 10005
Fax No.: (212) 269-5420
Attention: John Tripodoro

(3) if to the Company, at its address as follows:

Clean Harbors, Inc.
1501 Washington Street
Braintree, MA 02185
Fax No.: (781) 848-1632
Attention: Mark Burgess

with a copy to:

Davis Malm & D'Agostine, P.C.
One Boston Place, 37th Floor
Boston, MA 02108
Fax No.: (617) 523-6215
Attention: C. Michael Malm

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; three business days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged by recipient's facsimile machine operator, if sent by facsimile transmission; and on the day delivered, if sent by overnight air courier guaranteeing next day delivery.

(c) *No Inconsistent Agreements*. The Company has not, as of the date hereof, entered into, nor shall it, on or after the date hereof, enter into, any agreement with respect to its securities that is inconsistent with the rights granted to the Holders herein or otherwise conflicts with the provisions hereof.

(d) *Successors and Assigns*. This Agreement shall be binding upon the Company and its successors and assigns.

(e) *Counterparts*. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(f) *Headings*. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(g) *Governing* Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

(h) *Severability*. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(i) *Securities Held by the Company*. Whenever the consent or approval of Holders of a specified percentage of principal amount of Securities is required hereunder, Securities held by the Company or its affiliates (other than subsequent Holders of Securities if such subsequent Holders are deemed to be affiliates solely by reason of their holdings of such Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Issuer a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the several Initial Purchasers, the Issuer and the Guarantors in accordance with its terms.

[Signature pages to follow]

Very truly yours,

CLEAN HARBORS, INC.

By: /s/ STEPHEN MOYNIHAN

Name: STEPHEN MOYNIHAN

Title: SENIOR VICE PRESIDENT

ALTAIR DISPOSAL SERVICES, LLC
BATON ROUGE DISPOSAL, LLC
BRIDGEPORT DISPOSAL, LLC
CH INTERNATIONAL HOLDINGS, INC.
CLEAN HARBORS ANDOVER, LLC
CLEAN HARBORS ANTIOCH, LLC
CLEAN HARBORS ARAGONITE, LLC
CLEAN HARBORS ARIZONA, LLC
CLEAN HARBORS BATON ROUGE, LLC
CLEAN HARBORS BDT, LLC
CLEAN HARBORS BUTTONWILLOW, LLC
CLEAN HARBORS CHATTANOOGA, LLC
CLEAN HARBORS COFFEYVILLE, LLC
CLEAN HARBORS COLFAX, LLC
CLEAN HARBORS DEER PARK, L.P.
CLEAN HARBORS DEER TRAIL, LLC
CLEAN HARBORS DISPOSAL SERVICES, INC.
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.
CLEAN HARBORS FINANCIAL SERVICES COMPANY
CLEAN HARBORS FLORIDA, LLC
CLEAN HARBORS GRASSY MOUNTAIN, LLC
CLEAN HARBORS KANSAS, LLC
CLEAN HARBORS KINGSTON FACILITY CORPORATION
CLEAN HARBORS LAPORTE, L.P.
CLEAN HARBORS LAUREL, LLC
CLEAN HARBORS LONE MOUNTAIN, LLC
CLEAN HARBORS LONE STAR CORP.
CLEAN HARBORS LOS ANGELES, LLC
CLEAN HARBORS (MEXICO), INC.
CLEAN HARBORS OF BALTIMORE, INC.
CLEAN HARBORS OF BRAINTREE, INC.
CLEAN HARBORS OF CONNECTICUT, INC.
CLEAN HARBORS OF NATICK, INC.
CLEAN HARBORS OF TEXAS, LLC
CLEAN HARBORS PECATONICA, LLC
CLEAN HARBORS PLAQUEMINE, LLC
CLEAN HARBORS PPM, LLC
CLEAN HARBORS REIDSVILLE, LLC
CLEAN HARBORS SAN JOSE, LLC
CLEAN HARBORS SERVICES, INC.
CLEAN HARBORS TENNESSEE, LLC
CLEAN HARBORS WESTMORLAND, LLC
CLEAN HARBORS WHITE CASTLE, LLC

CROWLEY DISPOSAL, LLC
DISPOSAL PROPERTIES, LLC
GSX DISPOSAL, LLC
HARBOR INDUSTRIAL SERVICES TEXAS, L.P.
HARBOR MANAGEMENT CONSULTANTS, INC.
HILLIARD DISPOSAL, LLC
MURPHY'S WASTE OIL SERVICE, INC.
NORTHEAST CASUALTY REAL PROPERTY, LLC
ROEBUCK DISPOSAL, LLC
SAWYER DISPOSAL SERVICES, LLC
SERVICE CHEMICAL, LLC
SPRING GROVE RESOURCE RECOVERY, INC.
TULSA DISPOSAL, LLC

By: /s/ STEPHEN MOYNIHAN

Name: STEPHEN MOYNIHAN

Title: SENIOR VICE PRESIDENT

The foregoing Registration Rights
Agreement is hereby confirmed and
accepted as of the date first above written.

CREDIT SUISSE FIRST BOSTON LLC

By: /s/ DOUGLAS A. CRUIKSHANK
Name: DOUGLAS A. CRUIKSHANK
Title: MANAGING DIRECTOR

/s/ GOLDMAN, SACHS & CO.
(Goldman, Sachs & Co.)

Each broker-dealer that receives Exchange Securities for its own account pursuant to the Exchange Offer must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Securities. The Letter of Transmittal states that by so acknowledging and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act. This Prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of Exchange Securities received in exchange for Initial Securities where such Initial Securities were acquired by such broker-dealer as a result of market-making activities or other trading activities. The Company has agreed that, for a period of 180 days after the Expiration Date (as defined herein), it will make this Prospectus available to any broker-dealer for use in connection with any such resale. See "Plan of Distribution."

Each broker-dealer that receives Exchange Securities for its own account in exchange for Securities, where such Initial Securities were acquired by such broker-dealer as a result of market-making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Securities. See “Plan of Distribution.”

ANNEX C

PLAN OF DISTRIBUTION

Each broker-dealer that receives Exchange Securities for its own account pursuant to the Exchange Offer must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Securities. This Prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of Exchange Securities received in exchange for Initial Securities where such Initial Securities were acquired as a result of market-making activities or other trading activities. The Company has agreed that, for a period of 180 days after the Expiration Date, it will make this prospectus, as amended or supplemented, available to any broker-dealer for use in connection with any such resale. In addition, until , 20 , all dealers effecting transactions in the Exchange Securities may be required to deliver a prospectus. [1]

The Company will not receive any proceeds from any sale of Exchange Securities by broker-dealers. Exchange Securities received by broker-dealers for their own account pursuant to the Exchange Offer may be sold from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on the Exchange Securities or a combination of such methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or negotiated prices. Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealer or the purchasers of any such Exchange Securities. Any broker-dealer that resells Exchange Securities that were received by it for its own account pursuant to the Exchange Offer and any broker or dealer that participates in a distribution of such Exchange Securities may be deemed to be an "underwriter" within the meaning of the Securities Act and any profit on any such resale of Exchange Securities and any commission or concessions received by any such persons may be deemed to be underwriting compensation under the Securities Act. The Letter of Transmittal states that, by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

For a period of 180 days after the Expiration Date the Company will promptly send additional copies of this Prospectus and any amendment or supplement to this Prospectus to any broker-dealer that requests such documents in the Letter of Transmittal. The Company has agreed to pay all expenses incident to the Exchange Offer (including the expenses of one counsel for the Holders of the Securities) other than commissions or concessions of any brokers or dealers and will indemnify the Holders of the Securities (including any broker-dealers) against certain liabilities, including liabilities under the Securities Act.

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[1] In addition, the legend required by Item 502(e) of Regulation S–K will appear on the back cover page of the Exchange Offer prospectus.

☐ CHECK HERE IF YOU ARE A BROKER-DEALER AND WISH TO RECEIVE 10 ADDITIONAL COPIES OF THE PROSPECTUS AND 10 COPIES OF ANY AMENDMENTS OR SUPPLEMENTS THERETO.

Name: _____

Address: _____

_____

If the undersigned is not a broker-dealer, the undersigned represents that it is not engaged in, and does not intend to engage in, a distribution of Exchange Securities. If the undersigned is a broker-dealer that will receive Exchange Securities for its own account in exchange for Initial Securities that were acquired as a result of market-making activities or other trading activities, it acknowledges that it will deliver a prospectus in connection with any resale of such Exchange Securities; however, by so acknowledging and by delivering a prospectus, the undersigned will not be deemed to admit that it is an “underwriter” within the meaning of the Securities Act.

SCHEDULE A

GUARANTORS

Altair Disposal Services, LLC
Baton Rouge Disposal, LLC
Bridgeport Disposal, LLC
CH International Holdings, Inc.
Clean Harbors Andover, LLC
Clean Harbors Antioch, LLC
Clean Harbors Aragonite, LLC
Clean Harbors Arizona, LLC
Clean Harbors Baton Rouge, LLC
Clean Harbors BDT, LLC
Clean Harbors Buttonwillow, LLC
Clean Harbors Chattanooga, LLC
Clean Harbors Coffeyville, LLC
Clean Harbors Colfax, LLC
Clean Harbors Deer Park, L.P.
Clean Harbors Deer Trail, LLC
Clean Harbors Disposal Services, Inc.
Clean Harbors Environmental Services, Inc.
Clean Harbors Financial Services Company
Clean Harbors Florida, LLC
Clean Harbors Grassy Mountain, LLC
Clean Harbors Kansas, LLC
Clean Harbors Kingston Facility Corporation
Clean Harbors Laporte, L.P.
Clean Harbors Laurel, LLC
Clean Harbors Lone Mountain, LLC
Clean Harbors Lone Star Corp.
Clean Harbors Los Angeles, LLC
Clean Harbors (Mexico), Inc.
Clean Harbors of Baltimore, Inc.
Clean Harbors of Braintree, Inc.
Clean Harbors of Connecticut, Inc.
Clean Harbors of Natick, Inc.
Clean Harbors of Texas, LLC
Clean Harbors Pecatonica, LLC
Clean Harbors Plaquemine, LLC
Clean Harbors PPM, LLC
Clean Harbors Reidsville, LLC
Clean Harbors San Jose, LLC
Clean Harbors Services, Inc.

Clean Harbors Tennessee, LLC
Clean Harbors Westmorland, LLC
Clean Harbors White Castle, LLC
Crowley Disposal, LLC
Disposal Properties, LLC
GSX Disposal, LLC
Harbor Industrial Services Texas, L.P.
Harbor Management Consultants, Inc.
Hilliard Disposal, LLC
Murphy's Waste Oil Service, Inc.
Northeast Casualty Real Property, LLC
Roebuck Disposal, LLC
Sawyer Disposal Services, LLC
Service Chemical, LLC
Spring Grove Resource Recovery, Inc.
Tulsa Disposal, LLC

Exhibit 4.32

CLEAN HARBORS, INC.
as Issuer,

the GUARANTORS named herein

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

INDENTURE

Dated as of June 30, 2004

11 1/4% Senior Secured Notes due 2012

CROSS-REFERENCE TABLE

TIA Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.8; 7.10
(b)	7.8; 7.10; 13.2
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.5
(b)	13.3
(c)	13.3
313(a)	7.6
(b)(1)	7.6
(b)(2)	7.6
(c)	7.6; 13.2
(d)	7.6
314(a)	4.8; 4.10
(b)	10.2.
(c)(1)	7.2; 10.2; 13.4; 13.5
(c)(2)	7.2; 10.2; 13.4; 13.5
(c)(3)	N.A.
(d)	10.5.
(e)	13.5
(f)	N.A.
315(a)	7.1(b)
(b)	7.5
(c)	7.1
(d)	6.5; 7.1(c)
(e)	6.11
316(a)(last sentence)	2.9
(a)(1)(A)	6.5
(a)(1)(B)	6.4
(a)(2)	N.A.
(b)	6.7
(c)	9.4
317(a)(1)	6.8
(a)(2)	6.9
(b)	2.4
318(a)	13.1
(c)	13.1

N.A. means Not Applicable.

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be a part of this Indenture.

TABLE OF CONTENTS

Note: This Table of Contents shall not, for any purpose, be deemed to be part of this Indenture

INDENTURE dated as of June 30, 2004 among CLEAN HARBORS, INC., a Massachusetts corporation (the " Issuer" or the "Company"), the Guarantors (as defined herein) and U.S. BANK NATIONAL ASSOCIATION, as trustee (the "Trustee").

The Issuer has duly authorized the creation of an issue of 11 1/4% Senior Secured Notes due 2012 and, when and if issued as provided in the Registration Rights Agreement in an Exchange Offer, 11 1/4% Senior Subordinated Notes due 2012 registered under the Securities Act of 1933, as amended, and, to provide therefor, the Issuer has duly authorized the execution and delivery of this Indenture. All things necessary to make the Securities, when duly issued and executed by the Issuer and authenticated and delivered hereunder, the valid and binding obligations of the Issuer and to make this Indenture a valid and binding agreement of the Issuer have been done.

This Indenture is subject to, and shall be governed by, the mandatory provisions of the Trust Indenture Act of 1939 (the " TIA"), as amended, that are required to be a part of and to govern indentures qualified under the Trust Indenture Act of 1939, as amended.

Each party hereto agrees as follows for the benefit of each other party and for the equal and ratable benefit of the Holders of the Securities:

ARTICLE I

DEFINITIONS AND INCORPORATION BY REFERENCE

1.1. Definitions.

"Acceleration Notice" has the meaning set forth in Section 6.2.

"Accredited Investor" has the meaning set forth in Section 2.16(a).

"Acquired Indebtedness" means Indebtedness of a Person or any of its Subsidiaries (1) existing at the time such Person becomes a Restricted Subsidiary of the Company or at the time it merges or consolidates with the Company or any of its Restricted Subsidiaries or (2) assumed in connection with the acquisition of assets from such Person, in each case, not incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary of the Company or such acquisition, merger or consolidation.

"Affiliate" means, with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies

of a Person, whether through the ownership of voting securities, by contract or otherwise. "Controlling" and "controlled" have correlative meanings.

"Affiliate Transaction" has the meaning set forth in Section 4.12(a).

"Agent" means any Registrar, Paying Agent or co-Registrar.

"Agent Members" has the meaning set forth in Section 2.15(a).

"Asset Acquisition" means:

(1) an Investment by the Company or any of its Restricted Subsidiaries in any other Person pursuant to which such Person shall become a Restricted Subsidiary of the Company or any Restricted Subsidiary of the Company, or shall be merged with or into or consolidated with the Company or any Restricted Subsidiary of the Company; or

(2) the acquisition by the Company or any of its Restricted Subsidiaries of the assets of any Person (other than a Restricted Subsidiary of the Company) which constitute all or substantially all of the assets of such Person or comprise any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business.

"Asset Coverage Ratio" means, at any date, the ratio of (i) Consolidated Net Tangible Assets of the Company less the aggregate principal amount of First-Lien Obligations outstanding, to (ii) the aggregate principal amount of Securities outstanding.

"Asset Sale" means any direct or indirect sale, issuance, conveyance, transfer, lease (other than operating leases entered into in the ordinary course of business), assignment or other transfer for value by the Company or any of its Restricted Subsidiaries, including any Sale and Leaseback Transaction, to any Person other than the Company or a Wholly Owned Restricted Subsidiary of the Company of (a) any Capital Stock of any Restricted Subsidiary of the Company (other than directors' qualifying shares); or (b) any other property or assets of the Company or any Restricted Subsidiary of the Company other than in the ordinary course of business; provided, however, that Asset Sales shall not include:

(1) a transaction or series of related transactions for which the Company or its Restricted Subsidiaries receive aggregate consideration of less than $2.5 million;

(2) the sale, lease, conveyance, disposition or other transfer of all or substantially all of the assets of the Company as permitted under Section 5.1;

(3) disposals of equipment in connection with the reinvestment in or the replacement of equipment and disposals of worn-out or obsolete equipment;

(4) the sale or disposition of Receivables and Related Assets pursuant to a Qualified Receivables Transaction;

(5) the grant in the ordinary course of business of licenses to use the Company's or any Restricted Subsidiary's patents, trademarks and similar intellectual property;

(6) the disposition of any Capital Stock or other ownership interest in or assets or property of an Unrestricted Subsidiary;

(7) the release, surrender or waiver of contract, tort or other claims of any kind as a result of settlement of any litigation or threatened litigation;

(8) the granting or existence of Liens (and foreclosure thereon) not prohibited by this Indenture; and

(9) any Restricted Payment permitted under Section 4.3 or that constitutes a Permitted Investment.

"Bank Lenders" means the lenders under the Credit Agreement and/or their Affiliates.

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

"Beneficial Owner" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as such term is used in Section 13(d)(3) of the Exchange Act), such "person" shall be deemed to have beneficial ownership of all securities that such "person" has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition, regardless of when such right may be exercised.

"Board of Directors" means, as to any Person, the board of directors or equivalent governing board of such Person or any duly authorized committee thereof.

"Board Resolution" means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day" means any day other than a Saturday, Sunday or any other day on which banking institutions in the City of New York or the Corporate Trust Office are required or authorized by law or other governmental action to be closed.

"Capital Expenditure" means, for any period, expenditures (including the aggregate amount of Capitalized Lease Obligations incurred during such period) made by the Company or any of its Restricted Subsidiaries to acquire (including the acquisitions of Capital Stock, or all or substantially all of the assets, of a Person that becomes a Restricted Subsidiary of the Company permitted by this Indenture) or construct fixed assets, plant and equipment (including renewals, improvements and replacements, but excluding repairs unless such repairs are required to be capitalized in accordance with GAAP) during such period computed in accordance with GAAP; provided, however, that Capital Expenditures shall not include (a) any expenditure classified as a Permitted Investment, (b) any expenditure made with the proceeds of condemnation awards or insurance, (c) any expenditure with Net Cash Proceeds from Asset Sales, to the extent such expenditures do not exceed the book value of the assets sold in such Asset Sales, and (d) any expenditure financed with the proceeds of long term Indebtedness raised specifically to finance, in whole or in part, such Capital Expenditure.

"Capital Stock" means:

(1) with respect to any Person that is a corporation, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents (however designated and whether or not voting) of corporate stock; and

(2) with respect to any Person that is not a corporation, any and all partnership, membership, limited liability company interests or other equity interests of such Person.

"Capitalized Lease Obligation" means, at the time any determination thereof is to be made, the amount of the liability of a Person under a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP, with the stated maturity being the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"Cash Equivalents" means:

(1) U.S. dollars and, in the case of any Foreign Restricted Subsidiaries of the Company, such local currencies held by them from time to time in the ordinary course of business;

(2) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or Canada or issued by any agency of those countries and backed

by the full faith and credit of the respective country, in each case maturing within one year from the date of acquisition thereof;

(3) marketable direct obligations issued by any State of the United States of America or any political subdivision of any such State or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Ratings Services ("S&P") or Moody's Investors Service, Inc. ("Moody's") or, if Moody's and S&P cease to exist, any other nationally recognized statistical rating organization designated by the Board of Directors of the Company;

(4) commercial paper maturing no more than one year from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's or, if Moody's and S&P cease to exist, the equivalent from any other nationally recognized statistical rating organization designated by the Board of Directors of the Company;

(5) time deposits, certificates of deposit or bankers' acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States of America or any State thereof or the District of Columbia or any foreign jurisdiction having at the date of acquisition thereof combined capital and surplus of not less than $250.0 million;

(6) repurchase obligations with a term of not more than thirty days for underlying securities of the types described in clause (2) above entered into with any bank meeting the qualifications specified in clause (5) above;

(7) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued by, or unconditionally guaranteed by, the United States or Canada or issued by any agency of those countries and backed by the full faith and credit of the respective country, in each case maturing within 90 days from the date of acquisition; provided, that the terms of such agreements comply with the guidelines set forth in Repurchase Agreements of Depository Institutions with Securities Dealers and Others, as adopted by the Comptroller of the Currency on February 11, 1998;

(8) investments in money market funds which invest substantially all their assets in securities of the types described in clauses (2) through (7) above; and

(9) debt securities maturing within one year from the date of acquisition issued by any company organized under the laws of the United States of America and, at the time of acquisition, having a rating of at least A from S&P or at least A2 from

Moody's or, if Moody's and S&P cease to exist, the equivalent from any other nationally recognized statistical rating organization designated by our Board of Directors.

"Change of Control" means the occurrence of one or more of the following events:

(1) any sale, lease, exchange, conveyance, disposition or other transfer (in one transaction or a series of related transactions) of all or substantially all of the Company's assets to any Person or group of related Persons for purposes of Section 13(d) of the Exchange Act (a " Group"), together with any Affiliates thereof (whether or not otherwise in compliance with the provisions of this Indenture), other than to the Permitted Holders;

(2) any approval, adoption or initiation of a plan or proposal for the liquidation or dissolution of the Company;

(3) any Person or Group, together with any Affiliates thereof (other than the Permitted Holders), shall become the Beneficial Owner or owner of record (by way of merger, consolidation or other business combinations or by purchase in one transaction or a series of related transactions) of shares representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of the Company; or

(4) any Person or Group, together with any Affiliates thereof (other than the Permitted Holders), shall succeed in having a sufficient number of its nominees elected to the Board of Directors of the Company such that such nominees, when added to any existing director remaining on the Board of Directors of the Company after such election who was a nominee of or is an Affiliate of such Person or Group, will constitute a majority of the Board of Directors of the Company.

"Change of Control Offer" has the meaning set forth in Section 4.17(a).

"Change of Control Payment Date" has the meaning set forth in Section 4.17(a).

"Collateral" shall mean all property (whether real or personal) (other than any property constituting Second Lien Excluded Collateral (as defined in the Security Agreement)) with respect to which any security interests or Liens have been granted (or purported to be granted) pursuant to any Security Document, including, without limitation, each Security Document delivered pursuant to Section 10.1 hereof.

"Collateral Agent" means, (a) initially, Credit Suisse First Boston, acting through its Cayman Islands Branch for the benefit of the Secured Creditors (as defined in the Security Agreement) under the Security Documents and, in the case of the Mortgages, Credit Suisse First Boston, acting through its Cayman Islands Branch, for the benefit of the Senior Second

Lien Notes Creditors (as defined in the Mortgage), and (b) any subsequent collateral agent appointed by the Company pursuant to Section 10.12 hereof.

"Commission" means the United States Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act or, with respect to the Commission's duties under the TIA, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the TIA, then the body performing such duties at such time.

"Commodity Agreement" means any commodity futures contract, commodity option or other similar agreement or arrangement entered into by the Company or any Restricted Subsidiaries of the Company designed to protect the Company or any of its Restricted Subsidiaries against fluctuations in the price of the commodities at the time used in the ordinary course of business of the Company or any of its Restricted Subsidiaries.

"Common Stock" of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or nonvoting) of such Person's common stock, whether outstanding on the Issue Date or issued after the Issue Date, including all series and classes of such common stock.

"Company" means the party named as such in this Indenture until a successor replaces it pursuant to this Indenture and thereafter shall mean such successor Person.

"Consolidated EBITDA" means, with respect to any Person, for any period, the sum (without duplication) of:

(1) Consolidated Net Income; and

(2) to the extent Consolidated Net Income has been reduced by the following,

(a) all income taxes of such Person and its Restricted Subsidiaries paid or accrued in accordance with GAAP for such period (other than income taxes attributable to extraordinary, unusual or nonrecurring gains or losses or taxes attributable to sales or dispositions outside the ordinary course of business),

(b) Consolidated Interest Expense, and

(c) Consolidated Non-cash Charges less any non-cash items increasing Consolidated Net Income for such period,

all as determined on a consolidated basis for such Person and its Restricted Subsidiaries in accordance with GAAP as applicable. To the extent not otherwise included in the calculation thereof, Consolidated EBITDA shall be reduced by any extraordinary or nonrecurring cash charges and increased by any extraordinary or nonrecurring cash gains for the purposes of the definition of "Excess Cash Flow."

"Consolidated Fixed Charge Coverage Ratio" means, with respect to any Person, the ratio of Consolidated EBITDA of such Person during the four full fiscal quarters for which financial statements are available (the "Four Quarter Period") ending on or prior to the date of the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio (the "Transaction Date") to Consolidated Fixed Charges of such Person for the Four Quarter Period. In addition to and without limitation of the foregoing, for purposes of this definition, "Consolidated EBITDA" and "Consolidated Fixed Charges" shall be calculated after giving effect on a pro forma basis (consistent with the provisions below) for the period of such calculation to:

(1) the incurrence or repayment of any Indebtedness of such Person or any of its Restricted Subsidiaries (and the application of the proceeds thereof) giving rise to the need to make such calculation and any incurrence or repayment of other Indebtedness (and the application of the proceeds thereof), other than the incurrence or repayment of Indebtedness in the ordinary course of business for working capital purposes pursuant to working capital facilities, occurring during the Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such incurrence or repayment, as the case may be (and the application of the proceeds thereof), occurred on the first day of the Four Quarter Period; and

(2) any asset sales or other dispositions or Asset Acquisitions (including, without limitation, any Asset Acquisition giving rise to the need to make such calculation as a result of such Person or one of its Restricted Subsidiaries (including any Person who becomes a Restricted Subsidiary as a result of the Asset Acquisition) incurring, assuming or otherwise being liable for Acquired Indebtedness and also including any Consolidated EBITDA (including any pro forma expense and cost reductions calculated on a basis consistent with Regulation S-X under the Exchange Act) attributable to the assets which are the subject of the Asset Acquisition or asset sale or other dispositions during the Four Quarter Period) occurring during the Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such asset sale or other disposition or Asset Acquisition (including the incurrence, assumption or liability for any such Acquired Indebtedness) occurred on the first day of the Four Quarter Period. If such Person or any of its Restricted Subsidiaries directly or indirectly guarantees Indebtedness of a third Person, the preceding sentence shall give effect to the incurrence of such guaranteed

Indebtedness as if such Person or any Restricted Subsidiary of such Person had directly incurred or otherwise assumed such guaranteed Indebtedness.

Furthermore, in calculating "Consolidated Fixed Charges" for purposes of determining the denominator (but not the numerator) of this "Consolidated Fixed Charge Coverage Ratio,"

(1) interest on outstanding Indebtedness determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on the Transaction Date; and

(2) notwithstanding clause (1) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by agreements relating to Interest Swap Obligations or Currency Agreements, shall be deemed to accrue at the rate per annum resulting after giving effect to the operation of such agreements.

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

(1) Consolidated Interest Expense, plus

(2) the product of (x) the amount of all dividend payments on any series of Preferred Stock of such Person or its Restricted Subsidiaries (other than dividends paid in Qualified Capital Stock) paid, accrued or scheduled to be paid or accrued during such period times (y) a fraction, the numerator of which is one and the denominator of which is one minus the then current effective consolidated federal, state and local income tax rate of such Person, expressed as a decimal.

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

(1) the aggregate of the interest expense of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, including, without limitation, (a) any amortization of debt discount and amortization or write-off of deferred financing costs (including the amortization of costs relating to interest rate caps or other similar agreements), but excluding (x) the write-off of deferred financing costs as a result of prepayment of Indebtedness on the Issue Date and (y) the amortization of deferred financing costs recorded on the Issue Date in connection with the Securities and the Credit Agreement, (b) the net costs under Interest Swap Obligations, (c) all capitalized interest, (d) the interest portion of any deferred payment obligation, and (e) all fees payable in connection with the issuance of letters of credit or availability under a letter of credit facility; and

(2) the interest component of Capitalized Lease Obligations paid, accrued and/or scheduled to be paid or accrued by such Person and its Restricted Subsidiaries during such period as determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, with respect to any Person, for any period, the aggregate net income (or loss) of such Person and its Restricted Subsidiaries for such period on a consolidated basis, determined in accordance with GAAP; provided that the following shall be excluded:

(1) after-tax gains or losses from asset sales or abandonments or reserves relating thereto;

(2) after-tax items classified as extraordinary or nonrecurring gains or losses;

(3) the net income (but not loss) of any Restricted Subsidiary of the referent Person to the extent that the declaration of dividends or similar distributions by that Restricted Subsidiary of that income is prohibited by contract, operation of law or otherwise;

(4) the net income of any Person, other than a Restricted Subsidiary of the referent Person, except to the extent of cash dividends or distributions paid to the referent Person or to a Restricted Subsidiary of the referent Person by such Person;

(5) income or loss attributable to discontinued operations (including, without limitation, operations disposed of during such period whether or not such operations were classified as discontinued);

(6) in the case of a successor to the referent Person by consolidation or merger or as a transferee of the referent Person's assets, any earnings of the successor corporation prior to such consolidation, merger or transfer of assets;

(7) gains or losses from the cumulative effect of any change in accounting principles occurring after the Issue Date; and

(8) the write-off of deferred financing costs as a result of, and the cost of terminating interest rate swaps (if any) in connection with, the prepayments of outstanding Indebtedness on the Issue Date.

"Consolidated Net Tangible Assets" means, at any date, with respect to any Person, the consolidated total assets of such Person and its Restricted Subsidiaries determined in accordance with GAAP (calculated after giving pro forma effect to any acquisition of assets on such date), less all goodwill, trade names, trademarks, patents, unamortized debt discount,

organization expense and other similar intangibles properly classified as intangibles in accordance with GAAP.

"Consolidated Non-cash Charges" means, with respect to any Person, for any period, the aggregate depreciation, amortization, accretion and other non-cash expenses of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP (excluding any such charges constituting an extraordinary item or loss or any such charge (other than non-cash accretion of environmental liabilities required by GAAP) which requires an accrual of or a reserve for cash charges for any future period).

"Corporate Trust Office" means the office of the Trustee at which the corporate trust business of the Trustee shall, at any particular time, be principally administered, which office is, at the date of this Indenture, located at c/o U.S. Bank National Association, One Federal Street, 3rd Floor, Boston, MA 02110.

"Covenant Defeasance" has the meaning set forth in Section 8.2(c).

"Credit Agreement" means, collectively, (i) the Loan and Security Agreement dated as of the Issue Date, among the Company, certain Subsidiaries of the Company, the financial institutions party to such agreement in their capacities as lenders and/or issuers of letters of credit, Credit Suisse First Boston, as administrative agent for the letter of credit facility included thereunder, and Fleet Capital Corporation or its affiliate, as administrative agent for the revolving credit facility included thereunder, and certain other parties, and (ii) the related documents (including, without limitation, any guarantee agreements and security documents), in each case as such agreements, other agreements and security documents may be amended (including any amendment and restatement), supplemented or otherwise modified from time to time, including any agreement extending the maturity of, refinancing, replacing or otherwise restructuring (including increasing the amount of available borrowings or availability of letters of credit thereunder or adding Restricted Subsidiaries of the Company as additional borrowers or guarantors thereunder) all or any portion of the Indebtedness under such agreements, other agreements or any successor or replacement agreement or agreements and whether by the same or any other agent, lender or group of lenders or issuers of letters of credit.

"Currency Agreement" means any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect the Company or any Restricted Subsidiary of the Company against fluctuations in currency values.

"Custodian" means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

"Default" means an event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"Depository" shall mean The Depository Trust Company, New York, New York, or a successor thereto registered under the Exchange Act or other applicable statute or regulation.

"Destruction" means any damage to, loss or destruction of all or any portion of the Collateral.

"Disqualified Capital Stock" means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event (other than an event which would constitute a Change of Control), matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of a Change of Control), on or prior to the final maturity date of the Securities.

"Domestic Restricted Subsidiary" means any Restricted Subsidiary of the Company incorporated or otherwise organized or existing under the laws of the United States, any State thereof or the District of Columbia.

"DTC" has the meaning set forth in Section 2.14.

"Equity Offering" means a public or private sale of Qualified Capital Stock (other than on Form S-4 or S-8 or any successor Forms thereto) of the Company.

"Event of Default" has the meaning set forth in Section 6.1.

"Excess Cash Flow" means, for the Company and its Restricted Subsidiaries, for any period, its Consolidated EBITDA for such period less the sum, without duplication, of (i) the Company's consolidated interest expense as determined in accordance with GAAP but excluding any amortization of original issue discount attributable to such period; (ii) all federal, state, foreign and other income taxes accrued or paid in cash (without duplication) by the Company and its Restricted Subsidiaries during such period; (iii) an amount equal to the Capital Expenditures made in cash during such period; and (iv) all cash spent on environmental monitoring or remediation or relating to environmental liabilities of the Company and its Restricted Subsidiaries, plus any Excess Cash Flow carried over from the prior period in compliance with Section 4.21(c).

"Excess Cash Flow Amount" means, for any Excess Cash Flow Period, an amount equal to 50% of Excess Cash Flow for such Excess Cash Flow Period less the aggregate amount of all scheduled, mandatory and voluntary prepayments, repayments, redemptions or purchases of First-Lien Obligations or Capitalized Lease Obligations of the Company made

by the Company during such Excess Cash Flow Period (other than prepayments, repayments, redemptions or purchases made with the proceeds of Indebtedness incurred to Refinance the First-Lien Obligations or Capitalized Lease Obligations prepaid, repaid, redeemed or purchased during such Excess Cash Flow Period) including any cash required to be restricted to cash collateralize letters of credit either under the Credit Agreement or otherwise.

"Excess Cash Flow Offer" has the meaning set forth in Section 4.21.

"Excess Cash Flow Period" means the twelve-month period ending on June 30 of each year, beginning with the twelve-month period ending June 30, 2005.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"Exchange Notes" means the 11 1/4% Senior Secured Notes due 2012 (the terms of which are substantially identical to the Initial Notes except that the Exchange Notes shall be registered under the Securities Act, and shall not contain the restrictive legend on the face of the form of the Initial Notes), to be issued in exchange for the Initial Notes pursuant to the registered Exchange Offer.

"Exchange Offer" means the registration by the Company under the Securities Act pursuant to a registration statement of the offer by the Company to each Holder of the Initial Notes to exchange all the Initial Notes held by such Holder for the Exchange Notes in an aggregate principal amount equal to the aggregate principal amount of the Initial Notes held by such Holder, all in accordance with the terms and conditions of the Registration Rights Agreement.

"fair market value" means with respect to any asset or property, the price which could be negotiated in an arm's-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction. Fair market value shall be determined conclusively by the Board of Directors of the Company acting reasonably and in good faith and shall be evidenced by a Board Resolution of the Board of Directors of the Company delivered to the Trustee.

"First-Lien Obligations" means Obligations for Indebtedness (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Company and its Restricted Subsidiaries thereunder) incurred pursuant to the Credit Agreement and each other agreement under which Indebtedness of the Company or any of its Restricted Subsidiaries is incurred that is secured by Liens on all or a portion of the Collateral, which Liens are senior in priority to the Liens securing the Securities and the Guarantees; provided that such Indebtedness is incurred in compliance with the terms of this Indenture and secured by Liens permitted to be incurred pursuant to clause (ii), (iii) or (iv) of Section 4.16.

"First-Lien Obligations Termination Date" means that date upon which all First-Lien Obligations (other than those arising from indemnities for which no request has been made) have been paid in full in cash and all commitments and letters of credit constituting First-Lien Obligations have been terminated.

"Foreign Restricted Subsidiary" means any Restricted Subsidiary of the Company incorporated or organized in any jurisdiction outside of the United States.

"Four Quarter Period" has the meaning set forth in the definition of Consolidated Fixed Charge Coverage Ratio.

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect as of the Issue Date.

"Global Security" has the meaning set forth in Section 2.1.

"Guarantee" means the guarantee by each Guarantor of the Issuer's obligations under this Indenture.

"guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services (unless such purchase arrangements are on arm's-length terms and are entered into in the ordinary course of business), to take-or-pay, or to maintain financial statement conditions or otherwise), or (ii) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided that the term "guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The term "guarantee" used as a verb has a corresponding meaning.

"Guarantor" means:

(1) each Domestic Restricted Subsidiary (other than Northeast Casualty Risk Retention Group, Inc.) on the Issue Date;

(2) each Restricted Subsidiary required to execute and deliver a Guarantee pursuant to Section 4.15 and Section 4.20; and

(3) each of the Company's other Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of this Indenture as a Guarantor;

provided that any Person constituting a Guarantor as described above shall cease to constitute a Guarantor when its Guarantee is released in accordance with the terms of this Indenture.

"Holder" or "Securityholder" means the registered holder of any Security.

"incur" has the meaning set forth in Section 4.4.

"Indebtedness" means with respect to any Person, any indebtedness of such Person, without duplication, in respect of:

(1) all Obligations of such Person for borrowed money;

(2) all Obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(3) all Capitalized Lease Obligations of such Person;

(4) the deferred and unpaid purchase price of property, all conditional sale obligations and all Obligations under any title retention agreement (but excluding trade accounts payable and other accrued liabilities arising in the ordinary course of business) that are not overdue by 120 days or more or are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted;

(5) all Obligations for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction;

(6) guarantees and other contingent Obligations in respect of Indebtedness referred to in clauses (1) through (5) above and clause (8) below;

(7) all Obligations of any other Person of the type referred to in clauses (1) through (6) which are secured by any Lien on any property or asset of such Person, the amount of such Obligations being deemed to be the lesser of the fair market value of such property or asset or the amount of the Obligation so secured;

(8) all Obligations under Currency Agreements or Commodity Agreements and Interest Swap Obligations of such Person; and

(9) all Disqualified Capital Stock issued by such Person with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater

of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any.

For purposes hereof, the "maximum fixed repurchase price" of any Disqualified Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock as if such Disqualified Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Capital Stock, such fair market value shall be determined reasonably and in good faith by the Board of Directors of the issuer of such Disqualified Capital Stock. For purposes of Section 4.4, in determining the principal amount of any Indebtedness to be incurred by the Company or any Restricted Subsidiary or which is outstanding at any date, the principal amount of any Indebtedness which provides that an amount less than the principal amount thereof shall be due upon any declaration of acceleration thereof shall be the accreted value thereof at the date of determination.

"Indenture" means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof.

"Independent Financial Advisor" means a firm:

(1) which does not have a direct or indirect common equity interest in the Company; and

(2) which, in the judgment of the Board of Directors of the Company, is otherwise independent and qualified to perform the task for which it is to be engaged.

"Initial Notes" means the 11 1/4% Senior Secured Notes due 2012 of the Issuer issued on the Issue Date and authenticated and delivered under this Indenture pursuant to Section 2.2 and any other notes (other than Exchange Notes) issued after the Issue Date in accordance with clause (iii) of the fourth paragraph of Section 2.2.

"Institutional Accredited Investor" has the meaning set forth in Section 2.16(a).

"Interest Payment Date" means the stated maturity of an installment of interest on the Securities.

"Interest Swap Obligations" means the obligations of any Person pursuant to any arrangement with any other Person, whereby, directly or indirectly, such Person is entitled to receive from time to time periodic payments calculated by applying either a floating or a fixed rate of interest on a stated notional amount in exchange for periodic payments made by such other Person calculated by applying a fixed or a floating rate of interest on the same notional

amount and shall include, without limitation, interest rate swaps, caps, floors, collars and similar agreements.

"Investment" means, with respect to any Person, any direct or indirect loan or other extension of credit (including, without limitation, a guarantee) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition by such Person of any Capital Stock, bonds, notes, debentures or other securities or evidences of Indebtedness issued by, any Person. "Investment" shall exclude extensions of trade credit by, prepayment of expenses by, and receivables owing to, the Company and its Restricted Subsidiaries on commercially reasonable terms in accordance with normal trade practices of the Company or such Restricted Subsidiary, as the case may be. For purposes of Section 4.3:

(1) "Investment" shall include and be valued at the fair market value of the net assets of any Restricted Subsidiary of the Company at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary of the Company and shall exclude the fair market value of the net assets of any Unrestricted Subsidiary of the Company at the time that such Unrestricted Subsidiary is designated a Restricted Subsidiary of the Company; and

(2) the amount of any Investment shall be the original cost of such Investment plus the cost of all additional Investments by the Company or any of its Restricted Subsidiaries, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment, reduced by the payment of dividends or distributions in connection with such Investment or any other amounts received in respect of such Investment; provided that no such payment of dividends or distributions or receipt of any such other amounts shall reduce the amount of any Investment if such payment of dividends or distributions or receipt of any such amounts would be included in Consolidated Net Income.

If the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Common Stock of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person ceases to be a Restricted Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Common Stock of such Restricted Subsidiary not sold or disposed of.

"Issue Date" means June 30, 2004, the date of original issuance of the Initial Notes.

"Issuer" means the party named as such in the first paragraph of this Indenture.

"Legal Defeasance" has the meaning set forth in Section 8.2(b).

"Lien" means any lien, mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof and any agreement to give any security interest).

"Maturity Date" means July 15, 2012.

"Moody's" has the meaning set forth in the definition of Cash Equivalents.

"Mortgages" means each mortgage or deed of trust entered into as of the Issue Date (as amended, restated, modified, supplemented, extended or replaced from time to time) by the Company or any Guarantor (as mortgagor or grantor) and the Collateral Agent (as mortgagee or beneficiary) for the benefit of the Notes Secured Creditors, and each additional mortgage or deed of trust executed after the Issue Date in accordance with the provisions of Sections 10.1 and 10.2, which shall be substantially in the form of the mortgages and deeds of trust executed on the Issue Date, with such changes thereto as shall be reasonably acceptable to the Trustee.

"Net Cash Proceeds" means (a) with respect to any Asset Sale, the proceeds in the form of cash or Cash Equivalents including payments in respect of deferred payment obligations when received in the form of cash or Cash Equivalents (other than the portion of any such deferred payment constituting interest) received by the Company or any of its Restricted Subsidiaries from such Asset Sale net of:

(1) reasonable out-of-pocket expenses and fees relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees and sales commissions);

(2) taxes paid or payable after taking into account any reduction in consolidated tax liability due to available tax credits or deductions and any tax sharing arrangements;

(3) repayment of Indebtedness that is secured by the property or assets that are the subject of such Asset Sale;

(4) appropriate amounts to be provided by the Company or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Company or any Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale; and

(5) all distributions and other payments required to be made to minority interest holders in Restricted Subsidiaries or joint ventures as a result of such Asset Sale;

and (b) with respect to any issuance or sale of Capital Stock, the cash proceeds of such issuance or sale, net of attorneys' fees, accountants' fees, underwriters' or placement agents' or initial purchasers' fees, discounts or commissions and brokerage, consultant and other fees and expenses actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

"Net Insurance Proceeds" means the insurance proceeds (excluding liability insurance proceeds payable to the Trustee for any loss, liability or expense incurred by it and excluding the proceeds of business interruption insurance) or condemnation awards actually received by the Company or any Restricted Subsidiary of the Company as a result of the Destruction or Taking of all or any portion of the Collateral, net of:

(1) reasonable out-of-pocket expenses and fees relating to such Taking or Destruction (including, without limitation, expenses of attorneys and insurance adjusters); and

(2) repayment of Indebtedness that is secured by the property or assets that are the subject of such Taking or Destruction; provided that, in the case of any Destruction or Taking involving Collateral, the Lien securing such Indebtedness constitutes a Lien permitted by the indenture to be prior to the Lien granted to the Collateral Agent for the benefit of the Notes Secured Creditors pursuant to the Security Documents.

"Net Proceeds Offer" has the meaning set forth in Section 4.18.

"Net Proceeds Offer Amount" has the meaning set forth in Section 4.18.

"Net Proceeds Offer Payment Date" has the meaning set forth in Section 4.18.

"Net Proceeds Offer Trigger Date" has the meaning set forth in Section 4.18.

"New Domestic Restricted Subsidiary" has the meaning set forth in Section 4.20.

"Non-U.S. Person" means a person who is not a "U.S. Person" (as defined in Regulation S).

"Notes Secured Creditors" means, collectively, the Trustee and the Holders.

"Obligations" means all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Officer" means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Controller, the Treasurer or the Secretary of such Person.

"Officers' Certificate" means a certificate signed by two Officers of the Issuer or of any Guarantor, as applicable, except that an authentication order pursuant to Section 2.2 may be signed by only one such Officer.

"Offshore Global Securities" has the meaning set forth in Section 2.1.

"Offshore Physical Securities" has the meaning set forth in Section 2.1.

"Opinion of Counsel" means a written opinion from legal counsel, which opinion and counsel are reasonably acceptable to the Trustee.

"Paying Agent" has the meaning set forth in Section 2.3.

"Permitted Business" means the business of the Company and its Restricted Subsidiaries as existing on the Issue Date and any other businesses that are the same, similar or reasonably related, ancillary or complementary thereto and reasonable extensions thereof.

"Permitted Holders" means (i) Alan S. McKim; (ii) the spouse and lineal descendants of Alan S. McKim; (iii) any controlled Affiliate of any of the foregoing; (iv) in the event of the incompetence or death of any of the Persons described in clause (i) or (ii), such Person's estate, executor, administrator, committee or other personal representative, in each case who at any particular date will beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Issuer owned by such Person; or (v) any trusts, general partnerships or limited partnerships created for the benefit of the Persons described in clause (i), (ii) or (iv) or any trust for the benefit of any such trust, general partnership or limited partnership.

"Permitted Indebtedness" means, without duplication, each of the following:

(1) Indebtedness under the Initial Notes issued on the Issue Date in an aggregate principal amount not to exceed $150.0 million and the Exchange Notes with respect to the Initial Notes and any Guarantees thereof;

(2) Indebtedness (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Company and its Restricted Subsidiaries thereunder) incurred pursuant to the Credit Agreement by the Company and its Restricted Subsidiaries, in an aggregate principal amount at any time outstanding not to exceed the greater of (a) $135.0 million less the amount of all repayments of term debt and permanent commitment reductions under the Credit Agreement with Net Cash Proceeds of Asset Sales applied thereto as required by

Section 4.18(iii) and (b) the sum of (x) 80% of the book value of the accounts receivable of the Company and its Restricted Subsidiaries and (y) $40.0 million; provided that the aggregate principal amount of Indebtedness permitted to be incurred from time to time under this clause (2)(b) shall be reduced dollar for dollar by the amount of Indebtedness then outstanding under clause (12) below; provided further that any Indebtedness incurred pursuant to the Credit Agreement on the Issue Date shall be deemed to be incurred under this clause (2);

(3) other Indebtedness of the Company and its Restricted Subsidiaries outstanding on the Issue Date reduced by the amount of any scheduled amortization payments or mandatory prepayments when actually paid or permanent reductions thereon;

(4) Interest Swap Obligations of the Company covering Indebtedness of the Company or any of its Restricted Subsidiaries and Interest Swap Obligations of any Restricted Subsidiary of the Company covering Indebtedness of the Company or such Restricted Subsidiary; provided, however, that such Interest Swap Obligations are in a notional principal amount that does not exceed the principal amount of the Indebtedness to which such Interest Swap Obligation relates and are entered into for bona fide hedging purposes and not for speculation;

(5) Indebtedness under Currency Agreements; provided that in the case of Currency Agreements which relate to Indebtedness, such Currency Agreements do not increase the Indebtedness of the Company and its Restricted Subsidiaries outstanding other than as a result of fluctuations in foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder;

(6) Indebtedness of a Restricted Subsidiary of the Company to the Company or to a Wholly Owned Restricted Subsidiary of the Company for so long as such Indebtedness is held by the Company, a Wholly Owned Restricted Subsidiary of the Company or the lenders or collateral agent under the Credit Agreement, in each case subject to no Lien held by a Person other than the Company, a Wholly Owned Restricted Subsidiary of the Company or the lenders or collateral agent under the Credit Agreement; provided that if as of any date any Person other than the Company, a Wholly Owned Restricted Subsidiary of the Company or the lenders or collateral agent under the Credit Agreement owns or holds any such Indebtedness or holds a Lien in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness under this clause (6) by the issuer of such Indebtedness;

(7) Indebtedness of the Company to a Wholly Owned Restricted Subsidiary of the Company for so long as such Indebtedness is held by a Wholly Owned Restricted Subsidiary of the Company or the lenders or the collateral agent under the Credit Agreement and is subject to no Lien other than a Lien in favor of the lenders or

collateral agent under the Credit Agreement; provided that (a) any Indebtedness of the Company to any Wholly Owned Restricted Subsidiary of the Company is unsecured and subordinated, pursuant to a written agreement, to the Company's obligations under this Indenture and the Securities and (b) if as of any date any Person other than a Wholly Owned Restricted Subsidiary of the Company owns or holds any such Indebtedness or any Person holds a Lien other than a Lien in favor of the lenders or collateral agent under the Credit Agreement in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness under this clause (7) by the Company;

(8) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within two Business Days of incurrence;

(9) Indebtedness of the Company or any of its Restricted Subsidiaries in respect of performance bonds, bankers' acceptances, workers' compensation claims, surety or appeal bonds, payment obligations in connection with self-insurance or similar obligations, and bank overdrafts (and letters of credit in respect thereof) in the ordinary course of business;

(10) Indebtedness represented by Capitalized Lease Obligations and Purchase Money Indebtedness of the Company and its Restricted Subsidiaries not to exceed $20.0 million in the aggregate at any one time outstanding;

(11) Indebtedness under Commodity Agreements;

(12) the incurrence by a Receivables Entity of Indebtedness in a Qualified Receivables Transaction that is without recourse (other than pursuant to representations, warranties, covenants and indemnities entered into in the ordinary course of business in connection with a Qualified Receivables Transaction) to the Company or to any Restricted Subsidiary of the Company or their assets (other than such Receivables Entity and its Receivables and Related Assets), and is not guaranteed by any such Person; provided that any outstanding Indebtedness incurred under this clause (12) shall reduce (for so long as, and to the extent that, the Indebtedness referred to in this clause (12) remains outstanding) the aggregate amount of Indebtedness permitted to be incurred under clause (2) above to the extent set forth therein;

(13) Refinancing Indebtedness; and

(14) additional Indebtedness of the Company and its Restricted Subsidiaries in an aggregate principal amount not to exceed $20.0 million at any one time outstanding.

For purposes of determining compliance with Section 4.4:

(a) in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness described in clauses (1) through (14) above or is entitled to be incurred pursuant to the Consolidated Fixed Charge Coverage Ratio provisions of such Section, the Company shall, in its sole discretion, classify (or later reclassify) such item of Indebtedness in any manner that complies with Section 4.4,

(b) accrual of interest, accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms or in the form of Capital Stock, the payment of dividends on Disqualified Capital Stock in the form of additional shares of the same class of Disqualified Capital Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Capital Stock for purposes of Section 4.4,

(c) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included,

(d) if obligations in respect of letters of credit are incurred pursuant to the Credit Agreement and are being treated as incurred pursuant to clause (2) above and the letters of credit relate to other Indebtedness, then such other Indebtedness shall not be included, and

(e) if such Indebtedness is denominated in a currency other than U.S. dollars, the U.S. dollar equivalent principal amount thereof will be calculated based on the relevant currency exchange rates in effect on the date such Indebtedness was incurred.

"Permitted Investments" means:

(1) Investments by the Company or any Restricted Subsidiary of the Company in any Person that is or will become immediately after such Investment a Restricted Subsidiary of the Company or that will merge or consolidate into the Company or a Restricted Subsidiary of the Company; provided that such Restricted

Subsidiary of the Company is not restricted from making dividends or similar distributions by contract, operation of law or otherwise other than as permitted by Section 4.13;

(2) Investments in the Company by any Restricted Subsidiary of the Company; provided that any Indebtedness evidencing such Investment is unsecured and subordinated, pursuant to a written agreement, to the Company's obligations under the Securities and this Indenture;

(3) Investments in cash and Cash Equivalents;

(4) loans and advances to employees and officers of the Company and its Restricted Subsidiaries made (a) in the ordinary course of business for bona fide business purposes not to exceed $2.0 million in the aggregate at any one time outstanding or (b) to fund purchases of Capital Stock of the Company under any stock option plan or similar employment arrangements so long as no cash is actually advanced by the Company or any of its Restricted Subsidiaries to such employees and officers to fund such purchases;

(5) Currency Agreements, Commodity Agreements and Interest Swap Obligations entered into in the ordinary course of the Company's or its Restricted Subsidiaries' businesses and otherwise in compliance with this Indenture;

(6) Investments in securities of trade creditors or customers received (a) pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers or (b) in settlement of delinquent obligations of, and other disputes with, customers, suppliers and others, in each case arising in the ordinary course of business or otherwise in satisfaction of a judgment;

(7) Investments made by the Company or its Restricted Subsidiaries consisting of consideration received in connection with an Asset Sale made in compliance with Section 4.18;

(8) Investments of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary of the Company or at the time such Person merges or consolidates with the Company or any of its Restricted Subsidiaries, in either case in compliance with this Indenture; provided that such Investments were not made by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary of the Company or such merger or consolidation;

(9) Investments in the Securities;

(10) Investments in existence on the Issue Date;

(11) (a) an Investment in a trust, limited liability company, special purpose entity or other similar entity in connection with a Qualified Receivables Transaction; provided that (A) such Investment is made by a Receivables Entity and (B) the only assets transferred to such trust, limited liability company, special purpose entity or other similar entity consist of Receivables and Related Assets of such Receivables Entity, and (b) Investments of funds in any accounts permitted or required by the arrangements governing a Qualified Receivables Transaction;

(12) guarantees of Indebtedness to the extent permitted pursuant to Sections 4.4, 4.15 and 4.20; and

(13) additional Investments (including Investments in joint ventures and Unrestricted Subsidiaries) not to exceed $15.0 million at any one time outstanding.

"Permitted Liens" means the following types of Liens:

(1) Liens for taxes, assessments or governmental charges or claims either (a) not delinquent or (b) contested in good faith by appropriate proceedings and as to which the Company or its Restricted Subsidiaries shall have set aside on its books such reserves, if any, as shall be required in conformity with (x) GAAP in the case of a Domestic Restricted Subsidiary, and (y) generally accepted accounting principles in effect from time to time in the applicable jurisdiction, in the case of a Foreign Restricted Subsidiary;

(2) statutory and common law Liens of landlords and Liens of carriers, warehousemen, mechanics, suppliers, materialmen, repairmen, customs and revenue authorities and other Liens imposed by law incurred in the ordinary course of business for sums not yet delinquent or being contested in good faith, if such reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made in respect thereof;

(3) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, including any Lien securing letters of credit issued in the ordinary course of business consistent with past practice in connection therewith, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);

(4) judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally

terminated or the period within which such proceedings may be initiated shall not have expired;

(5) licenses, sublicenses, leases, subleases, easements, rights-of-way, zoning restrictions and other similar charges or encumbrances in respect of property not interfering in any material respect with the ordinary conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole;

(6) Liens securing Indebtedness permitted pursuant to clause (10) of the definition of "Permitted Indebtedness"; provided, however, that (i) in the case of Capitalized Lease Obligations, such Liens do not extend to any property or asset which is not leased property subject to such Capitalized Lease Obligation and (ii) that in the case of Purchase Money Indebtedness (a) the Indebtedness shall not exceed the cost of such property or assets and shall not be secured by any property or assets of the Company or any Restricted Subsidiary of the Company other than the property and assets so acquired or constructed and any improvements thereon and (b) the Lien securing such Indebtedness shall be created within 90 days of such acquisition or construction or, in the case of a refinancing of any Purchase Money Indebtedness, within 90 days of such refinancing;

(7) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or similar credit transactions issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(8) Liens securing reimbursement obligations with respect to commercial letters of credit which encumber documents and other property relating to such letters of credit and products and proceeds thereof;

(9) Liens encumbering deposits made to secure obligations arising from statutory, regulatory, contractual or warranty requirements of the Company or any of its Restricted Subsidiaries, including rights of offset and set-off;

(10) Liens securing Interest Swap Obligations so long as the Interest Swap Obligations relate to Indebtedness that is otherwise permitted under this Indenture;

(11) Liens in the ordinary course of business not exceeding $5.0 million at any one time outstanding that (a) are not incurred in connection with borrowing money and (b) do not materially detract from the value of the property or materially impair its use;

(12) Liens by reason of judgment or decree not otherwise resulting in a Default;

(13) Liens securing Indebtedness under Currency Agreements and Commodity Agreements permitted under this Indenture;

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

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

(16) Liens securing Acquired Indebtedness incurred in accordance with Section 4.4; provided that:

(a) such Liens secured such Acquired Indebtedness at the time of and prior to the incurrence of such Acquired Indebtedness by the Company or a Restricted Subsidiary of the Company and were not granted in connection with, or in anticipation of, the incurrence of such Acquired Indebtedness by the Company or a Restricted Subsidiary of the Company; and

(b) such Liens do not extend to or cover any property or assets of the Company or of any of its Restricted Subsidiaries other than the property or assets that secured the Acquired Indebtedness prior to the time such Indebtedness became Acquired Indebtedness of the Company or a Restricted Subsidiary of the Company and are no more favorable to the lienholders than those securing the Acquired Indebtedness prior to the incurrence of such Acquired Indebtedness by the Company or a Restricted Subsidiary of the Company;

(17) Liens securing insurance premium financing arrangements, provided that such Liens are limited to the applicable insurance contracts; and

(18) Liens on Receivables and Related Assets to reflect sales of receivables pursuant to a Qualified Receivables Transaction.

"Permitted Secured Debt" has the meaning set forth in Section 10.3(g).

"Person" means an individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof or any other entity.

"Physical Securities" has the meaning set forth in Section 2.1. Physical Securities are sometimes referred to herein as certificated Securities.

"Preferred Stock" of any Person means any Capital Stock of such Person that has preferential rights to any other Capital Stock of such Person with respect to dividends or redemptions or upon liquidation.

"Private Placement Legend" means the legend initially set forth on the Initial Notes in the form set forth in the first paragraph of Section 2.14.

"Purchase Agreement" means the Purchase Agreement, dated as of June 17, 2004, by and among the Issuer, the Guarantors and Credit Suisse First Boston LLC and Goldman, Sachs and Co., as the initial purchasers.

"Purchase Money Indebtedness" means Indebtedness of the Company and its Restricted Subsidiaries incurred in the normal course of business for the purpose of financing all or any part of the purchase price, or the cost of installation, construction or improvement, of property or equipment or other related assets and any Refinancing thereof.

"QIB" means any "qualified institutional buyer" (as defined under the Securities Act).

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock.

"Qualified Receivables Transaction" means any transaction or series of transactions that may be entered into by the Company or any of its Restricted Subsidiaries in which the Company or any of its Restricted Subsidiaries may sell, convey or otherwise transfer to (1) a Receivables Entity (in the case of a transfer by the Company or any of its Restricted Subsidiaries) and (2) any other Person (in the case of a transfer by a Receivables Entity), or may grant a security interest in, Receivables and Related Assets; provided that such transaction is on market terms at the time the Company, such Restricted Subsidiary or the Receivables Entity entered into the transaction.

"Receivables and Related Assets" means any accounts receivable (whether existing on the Issue Date or arising thereafter) of the Company or any of its Restricted Subsidiaries, and any assets related thereto, including, without limitation, all collateral securing such accounts receivable, all contracts and contract rights and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable.

"Receivables Entity" means a Wholly Owned Restricted Subsidiary of the Company (or another Person in which the Company or any Subsidiary of the Company makes an Investment and to which the Company or any Subsidiary of the Company transfers Receivables and Related Assets) that engages in no activities other than in connection with the financing

of accounts receivable and that is designated by the Board of Directors of the Company (as provided below) as a Receivables Entity:

(1) no portion of the Indebtedness or any other Obligations (contingent or otherwise) of which (a) is guaranteed by the Company or any Restricted Subsidiary of the Company (excluding guarantees of Obligations (other than the principal of, premium, if any, and interest on, Indebtedness) pursuant to representations, warranties, covenants and indemnities entered into in the ordinary course of business in connection with a Qualified Receivables Transaction), (b) is recourse to or obligates the Company or any Restricted Subsidiary of the Company in any way other than pursuant to representations, warranties, covenants and indemnities entered into in the ordinary course of business in connection with a Qualified Receivables Transaction or (c) subjects any property or asset of the Company or any Restricted Subsidiary of the Company (other than another Receivables Entity), directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to representations, warranties, covenants and indemnities entered into in the ordinary course of business in connection with a Qualified Receivables Transaction;

(2) with which neither the Company nor any Restricted Subsidiary of the Company has any material contract, agreement, arrangement or understanding other than on terms no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company, other than fees payable in the ordinary course of business in connection with servicing accounts receivable; and

(3) with which neither the Company nor any Restricted Subsidiary of the Company has any obligation to maintain or preserve such Restricted Subsidiary's financial condition or cause such Restricted Subsidiary to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by filing with the Trustee a Board Resolution giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing conditions.

"Record Date" means the applicable record date specified in the Securities.

"Redemption Date," when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to this Indenture and the Securities.

"Redemption Price," when used with respect to any Security to be redeemed, means the price fixed for such redemption, payable in immediately available funds, pursuant to this Indenture and the Securities.

"Refinance" means, in respect of any security or Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue a security or Indebtedness in exchange or replacement for, such security or Indebtedness in whole or in part. "Refinanced" and "Refinancing" shall have correlative meanings.

"Refinancing Indebtedness" means any Refinancing by the Company or any Restricted Subsidiary of the Company of (A) for purposes of clause (13) of the definition of "Permitted Indebtedness," Indebtedness incurred or existing in accordance with Section 4.4 (other than pursuant to clause (2), (4), (5), (6), (7), (8), (9), (10), (11), (12) or (14) of the definition of "Permitted Indebtedness") or (B) for any other purpose, Indebtedness incurred in accordance with Section 4.4, in each case that does not:

(1) result in an increase in the aggregate principal amount of Indebtedness of such Person as of the date of such proposed Refinancing (plus the amount of any premium, accrued interest and defeasance costs required to be paid under the terms of the instrument governing such Indebtedness and plus the amount of reasonable fees, expenses, discounts and commissions incurred by the Company in connection with such Refinancing); or

(2) create Indebtedness with (a) if the Indebtedness being Refinanced was incurred pursuant to clause (3) of the definition of "Permitted Indebtedness," a Weighted Average Life to Maturity that is less than the Weighted Average Life to Maturity of the Indebtedness being Refinanced or a final maturity earlier than the final maturity of the Indebtedness being Refinanced or (b) if the Indebtedness being Refinanced was otherwise incurred in accordance with the definition of "Permitted Indebtedness" or with Section 4.4, a Weighted Average Life to Maturity that is less than the Weighted Average Life to Maturity of the Securities or a final maturity earlier than the final maturity of the Securities;

provided that (x) if such Indebtedness being Refinanced is Indebtedness solely of the Company, then such Refinancing Indebtedness shall be Indebtedness solely of the Company and (y) if such Indebtedness being Refinanced is subordinate or junior to the Securities, then such Refinancing Indebtedness shall be subordinate to the Securities at least to the same extent and in the same manner as the Indebtedness being Refinanced.

"Registrar" has the meaning set forth in Section 2.3.

"Registration Rights Agreement" means the Registration Rights Agreement, dated June 30, 2004 among the Issuer, the Guarantors and Credit Suisse First Boston LLC and Goldman, Sachs & Co., as initial purchasers, as such agreement may be amended, modified or supplemented from time to time and, with respect to any notes issued after the Issue Date in accordance with clause (iii) of the fourth paragraph of Section 2.2, one or more registration rights agreements among the Issuer, the Guarantors and the other parties thereto, as such

agreement(s) may be amended, modified or supplemented from time to time, relating to rights given by the Issuer and the Guarantors to the purchasers of such notes to register such notes under the Securities Act.

"Regulation S" means Regulation S under the Securities Act.

"Released Interest" has the meaning set forth in Section 10.3(c).

"Responsible Officer" means, when used with respect to the Trustee, any officer in the Corporate Trust Office of the Trustee with direct responsibility for the administration of this Indenture or to whom any corporate trust matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Restricted Payment" has the meaning set forth in Section 4.3.

"Restricted Security" has the meaning assigned to such term in Rule 144(a)(3) under the Securities Act; provided that the Trustee shall be entitled to request and conclusively rely on an Opinion of Counsel with respect to whether any Security constitutes a Restricted Security.

"Restricted Subsidiary" of any Person means any Subsidiary of such Person which at the time of determination is not an Unrestricted Subsidiary.

"Rule 144A" means Rule 144A under the Securities Act.

"S&P" has the meaning set forth in the definition of Cash Equivalents.

"Sale and 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 the Company or a Restricted Subsidiary of any property, whether owned by the Company or any Restricted Subsidiary at the Issue Date or later acquired, which has been or is to be sold or transferred by the Company or such Restricted Subsidiary 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" means the Initial Notes, the Exchange Notes and any other notes issued after the Issue Date in accordance with clause (iii) of the fourth paragraph of Section 2.2 treated as a single class of securities, as amended or supplemented from time to time in accordance with the terms hereof, that are issued pursuant to this Indenture.

"Securities Act" means the Securities Act of 1933, as amended, or any successor statute or statutes thereto.

"Security Agreement" means the security agreement, dated as of the Issue Date (as amended, restated, modified, supplemented, extended or replaced from time to time), among

the Company and the Guarantors, from time to time, as Assignors, the Collateral Agent, the administrative agent under the letter of credit facility included in the Credit Agreement and the Trustee.

"Security Documents" means, collectively:

(1) the Security Agreement; and

(2) all other security agreements, mortgages, deeds of trust, deeds to secure debt, pledges, collateral assignments and other agreements or instruments evidencing or creating any security interest or Lien in favor of the Collateral Agent for the benefit of the Notes Secured Creditors in any or all of the Collateral.

"Senior Debt" means, with respect to a Person, the Securities, the Guarantees and any other Indebtedness of such Person that specifically provides that such Indebtedness is to rank on an equal basis with the Securities or Guarantees, as applicable, in right of payment and is not subordinated by its terms in right of payment to any Indebtedness or other Obligations.

Notwithstanding the foregoing, "Senior Debt" shall not include:

(1) any Indebtedness of the Company to a Subsidiary of the Company;

(2) Indebtedness to, or guaranteed on behalf of, any director, officer or employee of the Company or any director, officer or employee of any Subsidiary of the Company (including, without limitation, amounts owed for compensation);

(3) Indebtedness or other liabilities to trade creditors and other amounts incurred in connection with obtaining goods, materials or services (other than if incurred under the Credit Agreement);

(4) Indebtedness represented by Disqualified Capital Stock or in respect of Capital Stock;

(5) any liability for federal, state, local or other taxes owed or owing by the Issuer;

(6) that portion of any Indebtedness incurred in violation of Section 4.4 (unless the holder(s) of such obligation or their representative shall have received an Officers' Certificate of the Company to the effect that the incurrence of such Indebtedness does not (or, in the case of revolving credit Indebtedness, that the incurrence of the entire committed amount thereof at the date on which the initial borrowing thereunder is made would not) violate such provisions of this Indenture);

(7) Indebtedness which, when incurred and without respect to any election under Section 1111(b) of Title 11, United States Code, is without recourse to the Issuer; and

(8) any Indebtedness or other Obligation which is, by its express terms, subordinated in right of payment to any of the Company's other Indebtedness or other Obligation;

provided, if any Senior Debt is disallowed under Section 548 of Title 11, United States Code, or any applicable state fraudulent conveyance law, such Senior Debt shall nevertheless constitute Senior Debt for all purposes of this Indenture.

"Series B Preferred Stock" means the Company's Series B Convertible Preferred Stock under the Certificate of Vote therefore in effect on the Issue Date or as thereafter amended in a manner not materially adverse to the Holders.

"Significant Subsidiary," with respect to any Person means (1) any Restricted Subsidiary of such Person that satisfies the criteria for a "significant subsidiary" as defined in Regulation S-X under the Securities Act as such Regulation is in effect on the Issue Date and (2) any Restricted Subsidiary that, when aggregated with all other Restricted Subsidiaries that are not otherwise Significant Subsidiaries and as to which any event described in clause (v), (vi),(vii) or (viii) of Section 6.1 has occurred and is continuing, would constitute a Significant Subsidiary under clause (1) of this definition.

"Subsidiary," with respect to any Person, means:

(1) any corporation of which the outstanding Capital Stock having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances shall at the time be owned, directly or indirectly, by such Person or a Subsidiary of such Person; or

(2) any other Person of which at least a majority of the voting interest under ordinary circumstances is at the time, directly or indirectly, owned by such Person or a Subsidiary of such Person.

"Successor Collateral Agent" has the meaning set forth in Section 10.12.

"Surviving Entity" has the meaning set forth in Section 5.1(a)(i).

"Taking" means any taking of all or any portion of the Collateral by condemnation or other eminent domain proceedings, pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of all or any portion of the Collateral by any governmental authority, civil or military, or any sale pursuant to the exercise by any such

governmental authority of any right which it may then have to purchase or designate a purchaser or to order a sale of all or any portion of the Collateral.

"TIA" or "Trust Indenture Act" means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb), as amended, as in effect on the date of the execution of this Indenture until such time as this Indenture is qualified under the TIA, and thereafter as in effect on the date on which this Indenture is qualified under the TIA, except as otherwise provided in Section 9.3.

"Trust Monies" means all cash and Cash Equivalents received by the Trustee, net of fees and reasonable out-of-pocket expenses (including, without limitation, attorneys' fees and expenses):

(1) upon the release of Collateral, except pursuant to an Asset Sale; and

(2) pursuant to the Security Documents.

"Transaction Date" has the meaning set forth in the definition of "Consolidated Fixed Charge Coverage Ratio."

"Trustee" means the party named as such in this Indenture until a successor replaces it in accordance with the provisions of this Indenture and thereafter means such successor.

"UCC" has the meaning set forth in Section 10.1(b).

"Unrestricted Subsidiary" means (1) any Subsidiary of any Person that at the time of determination is designated an Unrestricted Subsidiary by the Board of Directors of such Person in the manner provided below and (2) any Subsidiary of an Unrestricted Subsidiary. The Board of Directors may designate any Subsidiary, including any newly acquired or newly formed Subsidiary, to be an Unrestricted Subsidiary only if (a) such Subsidiary does not own any Capital Stock of, or own or hold any Lien on any property of, the Company or any other Subsidiary of the Company that is not a Subsidiary of the Subsidiary to be so designated; (b) either (i) the Company certifies to the Trustee in an Officers' Certificate that such designation complies with Section 4.3 or (ii) the Subsidiary to be so designated at the time of designation has total consolidated assets of $5,000 or less; and (c) each Subsidiary to be so designated and each of its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any of its Restricted Subsidiaries (other than the assets of such Unrestricted Subsidiary). The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary only if (x) immediately after giving effect to such designation, the Company is able to incur at least $1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with Section 4.4 and (y) immediately before and immediately after giving

effect to such designation, no Default or Event of Default shall have occurred and be continuing. Any such designation by the Board of Directors shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the Board Resolution giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing provisions.

"U.S. Global Securities" has the meaning set forth in Section 2.1.

"U.S. Government Obligations" means direct obligations of, and obligations guaranteed by, the United States of America for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"U.S. Legal Tender" means such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

"U.S. Physical Securities" means the Securities issued in the form of permanent certificated Securities in registered form in substantially the form set forth in Exhibit A to Institutional Accredited Investors which are not QIBs (excluding Non-U.S. Persons) who purchased Securities pursuant to Regulation D of the Securities Act.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing (1) the then outstanding aggregate principal amount of such Indebtedness into (2) the sum of the total of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the making of such payment.

"Wholly Owned Restricted Subsidiary" of any Person means any Restricted Subsidiary of such Person of which all the outstanding voting securities (other than in the case of a Foreign Restricted Subsidiary, directors' qualifying shares or an immaterial amount of shares required to be owned by other Persons pursuant to applicable law) are owned by such Person or any Wholly Owned Restricted Subsidiary of such Person.

1.2. Incorporation by Reference of TIA.

Whenever this Indenture refers to a provision of the TIA, such provision is incorporated by reference in, and made a part of, this Indenture. The following TIA terms used in this Indenture have the following meanings:

"indenture securities" means the Securities.

"indenture security holder" means a Holder or a Securityholder.

"indenture to be qualified" means this Indenture.

"indenture trustee" or "institutional trustee" means the Trustee.

"obligor" on the indenture securities means the Company, any Guarantor or any other obligor on the Securities.

All other TIA terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by Commission rule and not otherwise defined herein have the meanings assigned to them therein.

1.3. Rules of Construction.

Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) "including" means including without limitation;

(5) words in the singular include the plural, and words in the plural include the singular;

(6) provisions apply to successive events and transactions;

(7) "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(8) all ratios and computations based on GAAP contained in this Indenture shall be computed in accordance with the definition of GAAP set forth in Section 1.1; and

(9) all references to Sections or Articles refer to Sections or Articles in this Indenture unless otherwise indicated.

ARTICLE II

THE SECURITIES

2.1. Form and Dating.

The Initial Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A and the Exchange Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit B. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage. The Issuer and the Trustee shall approve the form of the Securities and any notation, legend or endorsement on them. Each Security shall be dated the date of its authentication.

The terms and provisions contained in the Securities, annexed hereto as Exhibits A and B, and the Guarantees, annexed hereto as Exhibit E, shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Issuer, the Guarantors, and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Securities offered and sold in reliance on Rule 144A shall be issued initially in the form of one or more permanent global Securities in registered form, substantially in the form set forth in Exhibit A (the "U.S. Global Securities"), deposited with the Trustee, as custodian for the Depository, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided, and shall bear the legends set forth in Section 2.14. The aggregate principal amount of the U.S. Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depository, as hereinafter provided.

Securities issued in exchange for interests in the U.S. Global Securities pursuant to Section 2.15 may be issued in the form of permanent certificated Securities in registered form and shall bear the first legend set forth in Section 2.14.

Securities offered and sold in offshore transactions in reliance on Regulation S shall be issued initially in the form of one or more permanent global Securities in registered form substantially in the form set forth in Exhibit A (the "Offshore Global Securities"), duly executed by the Issuer and authenticated by the Trustee as hereinafter provided shall be deposited with the Trustee, as custodian for the Depository or its nominee, and the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the Offshore Global Securities in an amount equal to the principal amount of the beneficial interest in the Offshore Global Securities transferred. The aggregate principal amount of the Offshore Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depository, as hereinafter provided.

Securities issued in exchange for interests in the Offshore Global Securities pursuant to Section 2.15 may be issued in the form of permanent certificated Securities in registered form (the "Offshore Physical Securities") and shall bear the first legend set forth in Section 2.14. All Securities offered and sold in reliance on Regulation S shall remain in the form of an Offshore Global Security until the consummation of the Exchange Offer pursuant to the Registration Rights Agreement.

The Offshore Physical Securities and the U.S. Physical Securities are sometimes collectively herein referred to as the " Physical Securities." The U.S. Global Securities and the Offshore Global Securities are sometimes referred to herein as the " Global Securities."

2.2. Execution and Authentication .

One Officer or an Assistant Secretary, of the Issuer (each of whom shall, in each case, have been duly authorized by all requisite corporate actions) shall sign the Securities for the Issuer by manual or facsimile signature.

If an Officer whose signature is on a Security was an Officer at the time of such execution but no longer holds that office at the time the Trustee authenticates the Security, the Security shall nevertheless be valid.

A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall authenticate (i) Initial Notes for original issue on the Issue Date in the aggregate principal amount not to exceed $150,000,000, (ii) pursuant to the Exchange Offer, Exchange Notes from time to time for issue only in exchange for a like principal amount of Initial Notes and (iii) subject to compliance with Section 4.4, one or more series of Securities for original issue after the Issue Date (such Securities to be substantially in the form of Exhibit A or B, as the case may be) in an unlimited amount (and if in the form of Exhibit A the same principal amount of Exchange Notes in exchange therefor upon consummation of a registered exchange offer), in each case upon written orders of the Issuer in the form of an Officers' Certificate, which Officers' Certificate shall, in the case of any issuance pursuant to clause (iii) above, certify that such issuance is in compliance with Section 4.4. In addition, each such Officers' Certificate shall specify the amount of Securities to be authenticated, the date on which the Securities are to be authenticated, whether the Securities are to be Initial Notes, Exchange Notes or Securities issued under clause (iii) of the preceding sentence and the aggregate principal amount of Securities outstanding on the date of authentication, and shall further specify the amount of such Securities to be issued as a Global Security or Physical Securities. Such Securities shall initially be in the form of one or more Global Securities, which (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, the Securities to be issued, (ii) shall be registered in the name of the Depository

for such Global Security or Securities or its nominee and (iii) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instruction. All Securities issued under this Indenture shall vote and consent together on all matters as one class and no series of Securities will have the right to vote or consent as a separate class on any matter.

The Trustee may appoint an authenticating agent reasonably acceptable to the Issuer to authenticate the Securities. Unless otherwise provided in the appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Issuer and Affiliates of the Issuer.

The Securities shall be issuable only in registered form without coupons in denominations of $1,000 and integral multiples thereof.

2.3. Registrar and Paying Agent.

The Issuer shall maintain an office or agency in the Borough of Manhattan, The City of New York, where (a) Securities may be presented or surrendered for registration of transfer or for exchange ("Registrar"), (b) Securities may be presented or surrendered for payment ("Paying Agent") and (c) notices and demands to or upon the Issuer in respect of the Securities and this Indenture may be served. The Issuer may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Issuer of their obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes. The Issuer may act as its own Registrar or Paying Agent except that for the purposes of Articles Three and Eight and Sections 4.17 and 4.18, neither the Issuer nor any Affiliate of the Issuer shall act as Paying Agent. The Registrar shall keep a register of the Securities and of their transfer and exchange. The Issuer, upon notice to the Trustee, may have one or more co-Registrars and one or more additional paying agents reasonably acceptable to the Trustee. The term "Paying Agent" includes any additional paying agent. The Issuer hereby initially appoints the Trustee as Registrar and Paying Agent until such time as the Trustee has resigned or a successor has been appointed.

The Issuer shall enter into an appropriate agency agreement with any Agent not a party to this Indenture, which agreement shall implement the provisions of this Indenture that relate to such Agent. The Issuer shall notify the Trustee, in advance, of the name and address of any such Agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee shall act as such.

The Trustee is authorized to enter into a letter of representations with the Depository in the form provided by the Issuer and to act in accordance with such letter.

2.4. Paying Agent to Hold Assets in Trust.

The Issuer shall require each Paying Agent other than the Trustee to agree in writing that each Paying Agent shall hold in trust for the benefit of Holders or the Trustee all assets held by the Paying Agent for the payment of principal of, premium, if any, or interest on, the Securities (whether such assets have been distributed to it by the Issuer or any other obligor on the Securities), and shall notify the Trustee of any Default or Event of Default by the Issuer (or any other obligor on the Securities) in making any such payment. If either the Issuer or a Subsidiary acts as Paying Agent, it shall segregate such assets and hold them as a separate trust fund. The Issuer at any time may require a Paying Agent to distribute all assets held by it to the Trustee and account for any assets disbursed and the Trustee may at any time during the continuance of any payment Default or payment Event of Default, upon written request to a Paying Agent, require such Paying Agent to distribute all assets held by it to the Trustee and to account for any assets distributed. Upon distribution to the Trustee of all assets that shall have been delivered by the Issuer to the Paying Agent, the Paying Agent shall have no further liability for such assets.

2.5. Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Issuer shall furnish to the Trustee on or before each Interest Payment Date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders, which list may be conclusively relied upon by the Trustee.

2.6. Transfer and Exchange.

(a) Subject to the provisions of Sections 2.14 and 2.15, when Securities are presented to the Registrar or a co-Registrar with a request to register the transfer of such Securities or to exchange such Securities for an equal principal amount of Securities of other authorized denominations, the Registrar or co-Registrar shall register the transfer or make the exchange as requested if its requirements for such transaction are met; provided, however, that the Securities surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Registrar or co-Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing. To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Securities at the Registrar's or co-Registrar's request. No service charge shall be made for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchanges or transfers pursuant to Section 2.2, 2.10, 3.6, 4.17, 4.18 or 9.5). The Registrar or co-Registrar shall not be required to register the transfer of or exchange of any

Security (i) during a period beginning at the opening of business 15 days before the mailing of a notice of redemption of Securities and ending at the close of business on the day of such mailing, (ii) selected for redemption in whole or in part pursuant to Article Three, except the unredeemed portion of any Security being redeemed in part, and (iii) during a Change of Control Offer or a Net Proceeds Offer if such Security is tendered pursuant to such Change of Control Offer or Net Proceeds Offer and not withdrawn. A Global Security may be transferred, in whole but not in part, in the manner provided in this Section 2.6(a), only to a nominee of the Depository for such Global Security, or to the Depository, or a successor Depository for such Global Security selected or approved by the Issuer, or to a nominee of such successor Depository.

(b) If at any time the Depository for the Global Security or Securities notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Security or Securities or the Issuer becomes aware that the Depository has ceased to be a clearing agency registered under the Exchange Act, the Issuer shall appoint a successor Depository with respect to such Global Security or Securities. If a successor Depository for such Global Security or Securities has not been appointed within 90 days after the Issuer receives such notice or become aware of such ineligibility, the Issuer shall execute, and the Trustee, upon receipt of an Officers' Certificate for the authentication and delivery of Securities, shall authenticate and make available for delivery, Securities in definitive form, in an aggregate principal amount at maturity equal to the principal amount at maturity of the Global Security representing such Securities, in exchange for such Global Security. The Issuer shall reimburse the Registrar, the Depository and the Trustee for expenses they incur in documenting such exchanges and issuances of Securities in definitive form.

The Issuer may at any time and in their sole discretion determine that the Securities shall no longer be represented by such Global Security or Securities. In such event the Issuer will execute, and the Trustee, upon receipt of a written order for the authentication and delivery of individual Securities in exchange in whole or in part for such Global Security or Securities, will authenticate and make available for delivery individual Securities in definitive form in an aggregate principal amount equal to the principal amount of such Global Security or Securities in exchange for such Global Security or Securities.

In any exchange provided for in any of the preceding two paragraphs, the Issuer will execute and the Trustee will authenticate and make available for delivery individual Securities in definitive registered form in authorized denominations. Upon the exchange of a Global Security for individual Securities, such Global Security shall be cancelled by the Trustee. Securities issued in exchange for a Global Security pursuant to this Section 2.6(b) shall be registered in such names and in such authorized denominations as the Depository for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall make available for delivery such Securities to the Persons in whose names such Securities are so registered.

Neither the Issuer, the Trustee, any Paying Agent or the Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

2.7. Replacement Securities.

If a mutilated Security is surrendered to the Trustee or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall authenticate a replacement Security if the Trustee's requirements are met. If required by the Trustee or the Issuer, such Holder must provide an indemnity bond or other indemnity, sufficient in the judgment of both the Issuer and the Trustee, to protect the Issuer, the Trustee or any Agent from any loss which any of them may suffer if a Security is replaced. The Issuer may charge such Holder for its reasonable out-of-pocket expenses in replacing a Security pursuant to this Section 2.7, including reasonable fees and expenses of counsel.

Every replacement Security is an additional obligation of the Issuer.

2.8. Outstanding Securities.

Securities outstanding at any time are all the Securities that have been authenticated by the Trustee except those cancelled by it, those delivered to it for cancellation and those described in this Section as not outstanding. A Security does not cease to be outstanding because the Issuer, any Guarantor or any of their respective Subsidiaries or Affiliates holds the Security.

If a Security is replaced pursuant to Section 2.7 (other than a mutilated Security surrendered for replacement), it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser or a protected purchaser. A mutilated Security ceases to be outstanding upon surrender of such Security and replacement thereof pursuant to Section 2.7. If the principal amount of any Security is considered paid under Section 4.1, it ceases to be outstanding and interest ceases to accrue.

If on a Redemption Date or the Maturity Date the Paying Agent (other than the Issuer or a Subsidiary) holds U.S. Legal Tender sufficient to pay all of the principal, premium, if any, and interest due on the Securities payable on that date, then on and after that date such Securities cease to be outstanding and interest on them ceases to accrue.

2.9. Treasury Securities.

In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Issuer, any of its

Subsidiaries or any of its respective Affiliates shall be disregarded, except that, for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities that a Responsible Officer of the Trustee knows or has reason to know are so owned shall be disregarded.

2.10. Temporary Securities.

Until definitive Securities are ready for delivery, the Issuer may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Issuer considers appropriate for temporary Securities, as evidenced by execution of such temporary Securities by the Issuer. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate definitive Securities in exchange for temporary Securities. Until such exchange, temporary Securities shall be entitled to the same rights, benefits and privileges as definitive Securities. Notwithstanding the foregoing, so long as the Securities are represented by a Global Security, such Global Security may be in typewritten form.

2.11. Cancellation.

The Issuer at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee, or at the direction of the Trustee, the Registrar or the Paying Agent (other than the Issuer or a Subsidiary), and no one else, shall cancel and shall dispose of all Securities surrendered for registration of transfer, exchange, payment or cancellation. Subject to Section 2.7, the Issuer may not issue new Securities to replace Securities that they have paid or delivered to the Trustee for cancellation. If the Issuer or any Guarantor shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.11.

2.12. Defaulted Interest.

If the Issuer defaults in a payment of interest on the Securities, it shall, unless the Trustee fixes another record date pursuant to Section 6.10, pay the defaulted interest, plus (to the extent lawful) any interest payable on the defaulted interest, in any lawful manner. The Issuer may pay the defaulted interest to the Persons who are Holders on a subsequent special record date, which date shall be the fifteenth day next preceding the date fixed by the Issuer for the payment of defaulted interest or the next succeeding Business Day if such date is not a Business Day. At least 15 days before any such subsequent special record date, the Issuer shall mail to each Holder, with a copy to the Trustee, a notice that states the subsequent special record date, the payment date and the amount of defaulted interest, and interest payable on such defaulted interest, if any, to be paid.

2.13. CUSIP and ISIN Numbers.

The Issuer in issuing the Securities may use "CUSIP" and "ISIN" numbers, and if so, the Trustee shall use the CUSIP numbers in notices of redemption or exchange as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP and ISIN numbers printed in the notice or on the Securities, and that reliance may be placed only on the other identification numbers printed on the Securities and that any such redemption or exchange shall not be affected by any defect or omission of such CUSIP and ISIN numbers. The Issuer will promptly notify the Trustee of any change in CUSIP or ISIN number.

2.14. Restrictive Legends.

Unless and until a Security is exchanged for an Exchange Note or sold in connection with an effective registration statement under the Securities Act pursuant to the Registration Rights Agreement, (i) the U.S. Global Securities and U.S. Physical Securities shall bear the legend set forth below (the " Private Placement Legend") on the face thereof and (ii) the Offshore Physical Securities, until at least the 41st day after the Issue Date and receipt by the Issuer and the Trustee of a certificate substantially in the form of Exhibit D hereto, shall bear the legend set forth below on the face thereof.

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR ANY APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (I) IN THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (IV)

PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (V) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a) (1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT) THAT, PRIOR TO SUCH TRANSFER, FURNISHES THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE TRANSFER OF THIS SECURITY (THE FORM OF WHICH CAN BE OBTAINED FROM THE TRUSTEE) AND, IF SUCH TRANSFER IS IN RESPECT OF AN AGGREGATE PRINCIPAL AMOUNT OF SECURITIES LESS THAN $250,000, AN OPINION OF COUNSEL ACCEPTABLE TO THE ISSUER THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT, AND IN EACH OF CASES (I) THROUGH (V) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY SUBSEQUENT PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

Each Global Security shall also bear the following legend on the face thereof:

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY, OR BY ANY SUCH NOMINEE OF THE DEPOSITORY, OR BY THE DEPOSITORY OR NOMINEE OF SUCH SUCCESSOR DEPOSITORY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITORY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITORY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTION 2.16 OF THE INDENTURE GOVERNING THIS SECURITY.

2.15. Book-Entry Provisions for Global Security.

(a) Each Global Security initially shall (i) be registered in the name of the Depository or the nominee of such Depository, (ii) be delivered to the Trustee as custodian for such Depository and (iii) bear legends as set forth in Section 2.14.

Members of, or participants in, the Depository ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under any Global Security, and the Depository may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of each Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(b) Transfers of Global Securities shall be limited to transfers in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in any Global Security may be transferred or, subject to Section 2.1, exchanged for Physical Securities in accordance with the rules and procedures of the Depository and the provisions of Section 2.16. In addition, U.S. Physical Securities and Offshore Physical Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in U.S. Global Securities or Offshore Global Securities, as the case may be, if (i) the Depository notifies the Issuer that it is unwilling or unable to continue as Depository for the U.S. Global Securities or the Offshore Global Securities and a successor depositary is not appointed by the Issuer within 90 days of such notice or (ii) an Event of Default has occurred and is continuing and the Registrar has received a written request from the Depository or the Trustee to issue Physical Securities.

(c) In connection with any transfer or exchange of a portion of the beneficial interest in any Global Security to beneficial owners pursuant to paragraph (b), the Registrar shall (if one or more Physical Securities are to be issued) reflect on its books and records the date and a decrease in the principal amount of such Global Security in an amount equal to the principal amount of the beneficial interest in such Global Security to be transferred, and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, one or more

U.S. Physical Securities or Offshore Physical Securities, as the case may be, of like tenor and amount.

(d) In connection with the transfer of U.S. Global Securities or Offshore Global Securities, in whole, to beneficial owners pursuant to paragraph (b), the U.S. Global Securities or the Offshore Global Securities, as the case may be, shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, to each beneficial owner identified by the Depository in exchange for its beneficial interest in such U.S. Global Securities or Offshore Global Securities, as the case may be, an equal aggregate principal amount of U.S. Physical Securities or Offshore Physical Securities, as the case may be, of authorized denominations.

(e) Any Physical Security constituting a Restricted Security delivered in exchange for an interest in a Global Security pursuant to paragraph (b) or (c) shall, except as otherwise provided by paragraphs (a)(i)(x), (c), (d)(ii) and (e) of Section 2.16, bear the legend regarding transfer restrictions applicable to the Physical Securities set forth in Section 2.14.

(f) The Holder of a Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

2.16. Special Transfer Provisions.

(a) Transfers to Non-QIB Institutional Accredited Investors . The following provisions shall apply with respect to the registration of any proposed transfer of a Security constituting a Restricted Security to any institutional accredited investor (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) (an "Accredited Investor" or an "Institutional Accredited Investor") which is not a QIB (excluding Non-U.S. Persons):

(i) the Registrar shall register the transfer of any Security constituting a Restricted Security, whether or not such Security bears the Private Placement Legend, if (x) the transferee certifies that it is not an Affiliate of the Issuer and the requested transfer is after the second anniversary of the later of the (a) Issue Date and (b) the last date on which the Issuer or an Affiliate of the Issuer was the owner of such Security (or any predecessor Security) or such shorter period of time as permitted by Rule 144(k) under the Securities Act or any successor provision thereunder or (y) the proposed transferee has delivered to the Registrar a certificate substantially in the form of Exhibit C hereto and if such transfer is in respect of an aggregate principal amount of Securities of less than $250,000, the proposed transferee has delivered to the Registrar and the Issuer an Opinion of Counsel acceptable to the Issuer that such transfer is in compliance with the Securities Act and such other certifications, legal opinions or other information that the Trustee may reasonably request in order to confirm that

such transaction is being made pursuant to an exemption from or in a transaction not subject to the registration requirements of the Securities Act; and

(ii) if the proposed transferor is an Agent Member holding a beneficial interest in the U.S. Global Security, the Registrar shall register the transfer of any Security constituting a Restricted Security, whether or not such Security bears a Private Placement Legend upon receipt by the Registrar of (x) the certificate, if any, required by paragraph (i) above and (y) instructions given in accordance with the Depository's and the Registrar's procedures, whereupon (a) the Registrar shall reflect on its books and records the date and (if the transfer does not involve a transfer of outstanding U.S. Physical Securities) a decrease in the principal amount of the applicable U.S. Global Security in an amount equal to the principal amount of the beneficial interest in such U.S. Global Security to be transferred, and (b) the Issuer shall execute and the Trustee shall authenticate and make available for delivery one or more U.S. Physical Securities of like tenor and amount.

(b) Transfers to QIBs. The following provisions shall apply with respect to the registration of any proposed transfer of a Security to a QIB (excluding transfers to Non-U.S. Persons):

(i) if the Security to be transferred consists of (x) either Offshore Physical Securities prior to the removal of the Private Placement Legend or U.S. Physical Securities, the Registrar shall register the transfer if such transfer is being made by a proposed transferor who has checked the box provided for on the form of Security stating, or has otherwise advised the Issuer and the Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed the certification provided for on the form of Security stating, or has otherwise advised the Issuer and the Registrar in writing, that it is purchasing the Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a QIB within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as it has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A or (y) an interest in the U.S. Global Securities, the transfer of such interest may be effected only through the book entry system maintained by the Depository; and

(ii) if the proposed transferee is an Agent Member, and the Securities to be transferred consist of U.S. Physical Securities which after transfer are to be evidenced by an interest in a U.S. Global Security, upon receipt by the Registrar of instructions given in accordance with the Depository's and the Registrar's procedures, the Registrar

shall reflect on its books and records the date and an increase in the principal amount of the applicable U.S. Global Security in an amount equal to the principal amount of the U.S. Physical Securities to be transferred, and the Trustee shall cancel the U.S. Physical Securities so transferred.

(c) Transfers of Interests in the Permanent Offshore Global Securities or Unlegended Offshore Physical Securities . The following provisions shall apply with respect to any transfer of interests in Permanent Offshore Global Securities or unlegended Offshore Physical Securities. The Registrar shall register the transfer of any such Security without requiring any additional certification.

(d) Transfers to Non-U.S. Persons at Any Time. The following provisions shall apply with respect to any transfer of a Security to a Non-U.S. Person:

(i) Prior to the 41st day after the Issue Date, the Registrar shall register any proposed transfer of a Security to a Non-U.S. Person upon receipt of a certificate substantially in the form of Exhibit D hereto from the proposed transferor.

(ii) On and after the 41st day after the Issue Date, the Registrar shall register any proposed transfer to any Non-U.S. Person if the Security to be transferred is a U.S. Physical Security or an interest in U.S. Global Securities, upon receipt of a certificate substantially in the form of Exhibit D hereto from the proposed transferor.

(iii) (a) If the proposed transferor is an Agent Member holding a beneficial interest in the U.S. Global Securities, upon receipt by the Registrar of (x) the documents, if any, required by paragraph (ii) and (y) instructions in accordance with the Depository's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the U.S. Global Securities in an amount equal to the principal amount of the beneficial interest in the U.S. Global Securities to be transferred, and (b) if the proposed transferee is an Agent Member, upon receipt by the Registrar of instructions given in accordance with the Depository's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Offshore Global Securities in an amount equal to the principal amount of the U.S. Physical Securities or the U.S. Global Securities, as the case may be, to be transferred, and the Trustee shall cancel the U.S. Physical Security, if any, so transferred or decrease the amount of the U.S. Global Security.

(e) Private Placement Legend. Upon the registration of transfer, exchange or replacement of Securities not bearing the Private Placement Legend, the Registrar shall make available for delivery Securities that do not bear the Private Placement Legend. Upon the registration of transfer, exchange or replacement of Securities bearing the Private Placement Legend, the Registrar shall make available for delivery only Securities that bear the Private

Placement Legend unless (i) the circumstance contemplated by paragraph (a)(i)(x), (c) or (d)(ii) of this Section 2.16 exists or (ii) there is delivered to the Registrar an Opinion of Counsel reasonably satisfactory to the Issuer and the Trustee to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

(f) General. By its acceptance of any Security bearing the Private Placement Legend, each Holder of such Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and in the Private Placement Legend and agrees that it will transfer such Security only as provided in this Indenture.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.15 or this Section 2.16 in accordance with its customary procedures. The Issuer shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

(g) No Obligation of the Trustee. The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in the Depository or any other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Securities shall be given or made only to the registered Holders (which shall be the Depository or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(i) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

ARTICLE III

REDEMPTION

3.1. Notices to Trustee.

If the Issuer elects to redeem Securities pursuant to Paragraph 5 of the Securities, they shall notify the Trustee in writing of the Redemption Date, the Redemption Price and the principal amount of the applicable Securities to be redeemed. The Issuer shall give notice of redemption to the Paying Agent and Trustee at least 45 days but not more than 60 days before the Redemption Date (unless a shorter notice shall be agreed to by the Trustee in writing), together with an Officers' Certificate stating that such redemption will comply with the conditions contained herein.

3.2. Selection of Securities to Be Redeemed.

In the event that less than all of the Securities are to be redeemed at any time, selection of such Securities for redemption will be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which such Securities are listed or, if such Securities are not then listed on a national securities exchange, on a pro rata basis; provided, however, that no Securities of a principal amount of $1,000 or less shall be redeemed in part; and provided, further, that if a partial redemption is made with the Net Cash Proceeds of an Asset Sale or Equity Offering, selection of the Securities or portions thereof for redemption shall be made by the Trustee on a pro rata basis or on as nearly a pro rata basis as is practicable (subject to the procedures of the Depository), unless such method is otherwise prohibited.

3.3. Notice of Redemption.

At least 30 days but not more than 60 days before a Redemption Date, the Issuer shall mail a notice of redemption by first class mail, postage prepaid, to each Holder whose Securities are to be redeemed at its registered address. At the Issuer's request at least 45 days before a Redemption Date (unless a shorter period shall be acceptable to the Trustee), the Trustee shall give the notice of redemption in the Issuer's name and at the Issuer's expense. Each notice of redemption shall identify the Securities to be redeemed and shall state:

(a) the Redemption Date;

(b) the Redemption Price and the amount of accrued interest, if any, to be paid;

(c) the name and address of the Paying Agent;

(d) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price plus accrued interest, if any;

(e) that, unless the Issuer defaults in making the redemption payment, interest on Securities called for redemption ceases to accrue on and after the Redemption Date, and the only remaining right of the Holders of such Securities is to receive payment of the Redemption Price and accrued interest, if any, upon surrender to the Paying Agent of the Securities redeemed;

(f) if any Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the Redemption Date, and upon surrender of such Security, a new Security or Securities in aggregate principal amount equal to the unredeemed portion thereof will be issued;

(g) if fewer than all the Securities are to be redeemed, the identification of the particular Securities (or portion thereof) to be redeemed, as well as the aggregate principal amount of Securities to be redeemed and the aggregate principal amount of Securities to be outstanding after such partial redemption;

(h) the Paragraph of the Securities pursuant to which the Securities are to be redeemed; and

(i) the CUSIP or ISIN number, if any, printed on the Securities being redeemed and a statement that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Securities.

The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Security designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

3.4. Effect of Notice of Redemption.

Once notice of redemption is mailed in accordance with Section 3.3, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price plus accrued interest, if any. Upon surrender to the Trustee or Paying Agent, such Securities called for redemption shall be paid at the Redemption Price (which shall include accrued interest thereon to the Redemption Date), but installments of interest, the maturity of which is on or prior to the Redemption Date, shall be payable to Holders of record at the close of business on the relevant Record Dates.

3.5. Deposit of Redemption Price.

On or before 11:00 a.m. New York time on the Redemption Date, the Issuer shall deposit with the Paying Agent U.S. Legal Tender sufficient to pay the Redemption Price plus accrued interest, if any, of all Securities to be redeemed on that date.

If the Issuer complies with the preceding paragraph, then, unless the Issuer defaults in the payment of such Redemption Price plus accrued interest, if any, interest on the Securities to be redeemed will cease to accrue on and after the applicable Redemption Date, whether or not such Securities are presented for payment.

3.6. Securities Redeemed In Part.

Upon surrender of a Security that is to be redeemed in part only, the Trustee shall upon written instruction from the Issuer authenticate for the Holder a new Security or Securities in a principal amount equal to the unredeemed portion of the Security surrendered.

ARTICLE IV

COVENANTS

4.1. Payment of Securities.

The Issuer shall pay the principal of, premium, if any, and interest on the Securities in the manner provided in the Securities. An installment of principal of, premium, if any, or interest on the Securities shall be considered paid on the date it is due if the Trustee or Paying Agent holds on that date U.S. Legal Tender designated for and sufficient to pay the installment. If the Issuer or any Subsidiary of the Issuer acts as Paying Agent, an installment of principal, premium, if any, or interest shall be considered paid on the date it is due if the entity acting as Paying Agent complies with the second sentence of Section 2.4. Interest on the Securities will be computed on the basis of a 360-day year comprised of twelve 30-day months. As provided in Section 6.9, upon any bankruptcy or reorganization procedure relative to the Issuer, the Trustee shall serve as Paying Agent, if any, for the Securities.

4.2. Maintenance of Office or Agency.

The Issuer shall maintain in the Borough of Manhattan, The City of New York, the office or agency required under Section 2.3. The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 13.2.

The Issuer may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuer hereby initially designates the Trustee at its address c/o U.S. Bank National Association, U.S. Bank Trust New York, 100 Wall Street, New York, New York 10005, as such office of the Issuer in accordance with Section 2.3.

4.3. Limitation on Restricted Payments.

The Company shall not, and shall not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, (1) declare or pay any dividend or make any distribution (other than dividends or distributions payable in Qualified Capital Stock of the Company) on or in respect of shares of the Company's Capital Stock to holders of such Capital Stock; (2) purchase, redeem or otherwise acquire or retire for value any Capital Stock of the Company or any warrants, rights or options to purchase or acquire shares of any class of such Capital Stock of the Company; (3) make any principal payment on, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value, prior to any scheduled final maturity, scheduled repayment or scheduled sinking fund payment, any Indebtedness of the Company that is subordinate or junior in right of payment to the Securities or any Guarantee (other than Indebtedness described in clause (7) of the definition of "Permitted Indebtedness"); or (4) make any Investment (other than Permitted Investments) (each of the foregoing actions set forth in clauses (1), (2), (3) and (4) being referred to as a "Restricted Payment"), if at the time of such Restricted Payment or immediately after giving effect thereto:

(a) a Default or an Event of Default shall have occurred and be continuing; or

(b) the Company is not able to incur at least $1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with Section 4.4; or

(c) the aggregate amount of Restricted Payments (including such proposed Restricted Payment) made subsequent to the Issue Date (the amount expended for such purposes, if other than in cash, being the fair market value of such property as determined reasonably and in good faith by the Board of Directors of the Company whose determination shall be conclusive) shall exceed the sum of:

(i) 50% of the cumulative Consolidated Net Income (or if cumulative Consolidated Net Income shall be a loss, minus 100% of such loss) of the Company for the period (treating such period as a single accounting period) commencing on the first day of the first full fiscal quarter commencing after

the Issue Date to and including the last day of the fiscal quarter ended immediately prior to the date of such calculation for which consolidated financial statements are available; plus

(ii) 100% of the aggregate Net Cash Proceeds received by the Company from any Person (other than a Subsidiary of the Company) from the issuance and sale subsequent to the Issue Date of Qualified Capital Stock of the Company; plus

(iii) without duplication of any amounts included in clause (c)(ii) above, 100% of the aggregate Net Cash Proceeds of any equity contribution received by the Company from a holder of the Company's Capital Stock; plus

(iv) the amount by which Indebtedness of the Company or any of its Restricted Subsidiaries is reduced on the Company's balance sheet upon the conversion or exchange subsequent to the Issue Date of any Indebtedness of the Company or any of its Restricted Subsidiaries incurred after the Issue Date into or for Qualified Capital Stock; plus

(v) without duplication, the sum of:

(a) the aggregate amount returned in cash on or with respect to Investments (other than Permitted Investments) made subsequent to the Issue Date whether through interest payments, principal payments, dividends or other distributions or payments;

(b) the net cash proceeds received by the Company or any Restricted Subsidiary of the Company from the disposition of all or any portion of such Investments (other than to a Subsidiary of the Company); and

(c) upon redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, the fair market value of such Subsidiary (valued in each case as provided in the definition of "Investment");

provided, however, that the sum of clauses (a), (b) and (c) above shall not exceed the aggregate amount of all such Investments made by the Company or any Restricted Subsidiary in the relevant Person or Unrestricted Subsidiary subsequent to the Issue Date.

Notwithstanding the foregoing, the provisions set forth in the immediately preceding paragraph do not prohibit:

(1) the payment of any dividend or other distribution within 60 days after the date of declaration of such dividend or other distribution if the dividend or other distribution would have been permitted on the date of declaration;

(2) if no Default or Event of Default shall have occurred and be continuing, the payment of regular quarterly dividends at the rate of $1.00 per share upon the Issuer's 112,000 outstanding shares of Series B Preferred Stock;

(3) the acquisition of any shares of Capital Stock of the Company, either (a) solely in exchange for shares of Qualified Capital Stock of the Company, or (b) through the application of net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Company) of shares of Qualified Capital Stock of the Company;

(4) the acquisition of any Indebtedness of the Company that is subordinate or junior in right of payment to the Securities or a Guarantee either (a) solely in exchange for shares of Qualified Capital Stock of the Company, or (b) through the application of the net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Company) of (i) shares of Qualified Capital Stock of the Company, or (ii) Refinancing Indebtedness;

(5) if no Default or Event of Default shall have occurred and be continuing, repurchases by the Issuer of Common Stock of the Company from officers, directors and employees of the Company or any of its Subsidiaries or their authorized representatives upon the death, disability or termination of employment of such employees or termination of their seat on the Board of Directors of the Company, in an aggregate amount not to exceed $1.0 million in any calendar year with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum of $2.0 million in any calendar year;

(6) if no Default or Event of Default shall have occurred and be continuing, other Restricted Payments in an aggregate amount not to exceed $5.0 million; and

(7) repurchases of Capital Stock of the Company deemed to occur upon the exercise of stock options, warrants or other convertible securities, to the extent such Capital Stock represents a portion of the consideration for such exercise.

In determining the aggregate amount of Restricted Payments made subsequent to the Issue Date in accordance with clause (c) of the immediately preceding paragraph, amounts expended pursuant to clauses (1), (2), (3)(b), (4)(b)(i), (5) and (6) shall be included in such calculation.

Not later than the date of making any Restricted Payment, the Company shall deliver to the Trustee an Officers' Certificate stating that such Restricted Payment complies with this Indenture and setting forth in reasonable detail the basis upon which the required calculations were computed, which calculations may be based upon the Company's latest available internal quarterly financial statements.

4.4. Limitation on Incurrence of Additional Indebtedness .

(a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume, guarantee, acquire, become liable, contingently or otherwise, with respect to, or otherwise become responsible for payment of (collectively, " incur") any Indebtedness (other than Permitted Indebtedness); provided, however, that if no Default or Event of Default shall have occurred and be continuing at the time of or as a consequence of the incurrence of any such Indebtedness, the Company and any of its Restricted Subsidiaries that is, or upon such incurrence becomes, a Guarantor may incur Indebtedness (including, without limitation, Acquired Indebtedness) and any Restricted Subsidiary of the Company that is not, or will not become, upon such occurrence, a Guarantor may incur Acquired Indebtedness, in each case, if on the date of the incurrence of such Indebtedness, after giving effect to the incurrence thereof, the Consolidated Fixed Charge Coverage Ratio of the Company is greater than 2.25 to 1.0.

(b) The Company shall not, and shall not permit any Guarantor to, directly or indirectly, incur any Indebtedness which by its terms (or by the terms of any agreement governing such Indebtedness) is expressly subordinated in right of payment to any other Indebtedness of the Company or such Guarantor, as the case may be, unless such Indebtedness is also by its terms (or by the terms of any agreement governing such Indebtedness) made expressly subordinate to the Securities or the applicable Guarantee, as the case may be, to the same extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of the Company or such Guarantor, as the case may be. For purposes of the foregoing, no Indebtedness will be deemed to be subordinated in right of payment to any other Indebtedness of the Company or any Guarantor solely by virtue of such Indebtedness being unsecured or by virtue of the fact that the holders of such Indebtedness have entered into one or more intercreditor agreements giving one or more of such holders priority over the other holders in the collateral held by them.

4.5. Corporate Existence.

Except as otherwise permitted by Article Five, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate, partnership or other existence of each of its Restricted Subsidiaries in accordance with the respective organizational documents of each such Restricted Subsidiary and the rights (charter and statutory) and material franchises of the Company and each of its Restricted Subsidiaries; provided, however, that neither the Company nor any Restricted

Subsidiary shall be required to preserve any such right or franchise or in the case of any Restricted Subsidiary, its existence, if (in each case) the Board of Directors of the Company shall determine that the loss thereof is not, and will not be, adverse in any material respect to the Holders.

4.6. Payment of Taxes and Other Claims.

The Company shall pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (a) all material taxes, assessments and governmental charges levied or imposed upon it or any of its Subsidiaries or upon the income, profits or property of it or any of its Restricted Subsidiaries and (b) all lawful claims for labor, materials and supplies which, in each case, if unpaid, might by law become a material liability or Lien upon the property of it or any of its Restricted Subsidiaries; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, (i) the applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate provision has been made or (ii) where the failure to effect such payment or discharge is not adverse in any material respect to the Holders.

4.7. Maintenance of Properties and Insurance .

(a) The Company shall cause all material properties owned by or leased by it or any of its Restricted Subsidiaries used or useful to the conduct of its business or the business of any of its Restricted Subsidiaries, taken as a whole, to be maintained and kept in normal condition, repair and working order and supplied with all necessary equipment and shall cause to be made all repairs, renewals, replacements, and betterments thereof, all as in its judgment may be necessary, so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section 4.7 shall prevent the Company or any of its Restricted Subsidiaries from discontinuing the use, operation or maintenance of any of such properties, or disposing of any of them, if such discontinuance or disposal is, in the judgment of the Board of Directors of the Company or any such Restricted Subsidiary desirable in the conduct of the business of the Company or any such Restricted Subsidiary, and if such discontinuance or disposal is not adverse in any material respect to the Holders; provided further that nothing in this Section 4.7 shall prevent the Company or any of its Restricted Subsidiaries from discontinuing or disposing of any properties to the extent otherwise permitted by this Indenture.

(b) The Company shall maintain, and shall cause its Restricted Subsidiaries to maintain, insurance with responsible carriers against such risks and in such amounts, and with such deductibles, retentions, self-insured amounts and co-insurance provisions, as are, in the Company's reasonable judgment, customarily carried by similar businesses of similar size, including property and casualty loss, workers' compensation and interruption of business insurance.

4.8. Compliance Certificate; Notice of Default.

(a) The Company and each Guarantor shall deliver to the Trustee, within 120 days after the close of each fiscal year of the Company, an Officers' Certificate stating that a review of the activities of each of the Company has been made under the supervision of the signing Officers with a view to determining whether it has kept, observed, performed and fulfilled its obligations under this Indenture and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge, the Company or the applicable Guarantor during such preceding fiscal year have kept, observed, performed and fulfilled each and every such covenant and no Default or Event of Default occurred during such year and at the date of such certificate there is no Default or Event of Default that has occurred and is continuing or, if such signers do know of such Default or Event of Default, the certificate shall describe its status with particularity. The applicable Officers' Certificate shall also notify the Trustee should either of the Company or any Guarantor elect to change the manner in which it fixes its fiscal year end.

(b) The Company shall deliver to the Trustee, in the event that any Officer becomes aware of any Default or Event of Default in the performance of any covenant, agreement or condition contained in this Indenture, an Officers' Certificate specifying the Default or Event of Default and describing its status with particularity.

4.9. Compliance with Laws.

The Company shall comply, and shall cause each of its Subsidiaries to comply, with all applicable statutes, rules, regulations, orders and restrictions of the United States, all states and municipalities thereof, and of any governmental department, commission, board, regulatory authority, bureau, agency and instrumentality of the foregoing, in respect of the conduct of their respective businesses and the ownership of their respective properties, except for such noncompliances as would not in the aggregate have a material adverse effect on the financial condition or results of operations of the Company and its Subsidiaries taken as a whole.

4.10. Reports to Holders.

Whether or not required by the rules and regulations of the Commission, so long as any Securities are outstanding, the Company shall file a copy of the following information and reports with the Commission for public availability (unless the Commission will not accept such a filing) and shall furnish to the Holders of Securities and to securities analysts and prospective investors, upon their written request:

(i) all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K under the Exchange Act if the Company were required to file such Forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations"

that describes the financial condition and results of operations of the Company and its consolidated Subsidiaries and, with respect to the annual information only, a report thereon by the Company's certified independent accountants; and

(ii) all current reports that would be required to be filed with the Commission on Form 8-K under the Exchange Act if the Company were required to file such reports, in each case within the time periods specified in the Commission's rules and regulations.

In addition, following the consummation of the Exchange Offer, whether or not required by the rules and regulations of the Commission, the Company shall file a copy of all such information and reports with the Commission for public availability within the time periods specified in the Commission's rules and regulations (unless the Commission will not accept such a filing) and make such information available to securities analysts and prospective investors upon written request to the Company.

In addition, for so long as any Securities remain outstanding, the Company shall furnish to the Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

4.11. Waiver of Stay, Extension or Usury Laws.

The Company and each Guarantor, covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive the Company or such Guarantor from paying all or any portion of the principal of, premium, if any, and/or interest on the Securities or the Guarantee of any such Guarantor as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture, and (to the extent that it may lawfully do so) each hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

4.12. Limitations on Transactions with Affiliates.

(a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with, or for the benefit of, any of its Affiliates (each an "Affiliate Transaction"), other than (x) Affiliate Transactions permitted under paragraph (b) below and (y) Affiliate Transactions on terms that are no less favorable than those that could reasonably have been obtained in a comparable transaction at such time on an arm's-length basis from a

Person that is not an Affiliate of the Company or such Restricted Subsidiary. All Affiliate Transactions (and each series of related Affiliate Transactions which are similar or part of a common plan) involving aggregate payments or other property with a fair market value in excess of $4.0 million shall be approved by the Board of Directors of the Company or such Restricted Subsidiary, as the case may be, such approval to be evidenced by a Board Resolution stating that such Board of Directors has determined that such transaction complies with the foregoing provisions. If the Company or any Restricted Subsidiary of the Company enters into an Affiliate Transaction (or a series of related Affiliate Transactions related to a common plan) that involves an aggregate fair market value of more than $10.0 million, the Company or such Restricted Subsidiary, as the case may be, shall, prior to the consummation thereof, obtain a favorable opinion as to the fairness of such transaction or series of related transactions to the Company or the relevant Restricted Subsidiary, as the case may be, from a financial point of view, from an Independent Financial Advisor and file the same with the Trustee.

(b) The restrictions set forth in clause (a) shall not apply to:

(i) reasonable fees and compensation paid to, and indemnity provided on behalf of, officers, directors, employees or consultants of the Company or any Restricted Subsidiary of the Company as determined in good faith by the Company's Board of Directors;

(ii) transactions exclusively between or among the Company and any of its Restricted Subsidiaries or exclusively between or among such Restricted Subsidiaries, provided such transactions are not otherwise prohibited by this Indenture;

(iii) any agreement as in effect or entered into as of the Issue Date or any amendment thereto or any transaction contemplated thereby (including pursuant to any amendment thereto) or in any replacement agreement thereto so long as any such amendment or replacement agreement is not more disadvantageous to the Holders in any material respect than the original agreement as in effect on the Issue Date;

(iv) transactions effected as part of a Qualified Receivables Transaction;

(v) Restricted Payments and Permitted Investments permitted by this Indenture;

(vi) the issuance of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans or similar employee benefit plans approved by the Board of Directors of the Company in good faith; and

(vii) transactions with a Person (other than an Unrestricted Subsidiary) that is an Affiliate of the Company solely because the Company owns, directly or indirectly, any Capital Stock of such Person.

4.13. Limitation on Dividend and Other Payment Restrictions Affecting Subsidiaries .

The Company shall not, and shall not cause or permit any of its Restricted Subsidiaries (other than a Restricted Subsidiary that has executed a Guarantee) to, directly or indirectly, create or otherwise cause or permit to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary of the Company to (a) pay dividends or make any other distribution on or in respect of its Capital Stock; (b) make loans or advances or pay any Indebtedness or other obligation owed to the Company or any other Restricted Subsidiary of the Company; or (c) transfer any of its property or assets to the Company or any other Restricted Subsidiary of the Company, except for such encumbrances or restrictions existing under or by reason of:

(i) applicable law, rule, regulation, order, grant or governmental permit;

(ii) this Indenture and the Security Documents;

(iii) the Credit Agreement;

(iv) customary non-assignment provisions of any contract, license or lease of any Restricted Subsidiary of the Company;

(v) any instrument governing Acquired Indebtedness, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired;

(vi) agreements existing or entered into on the Issue Date to the extent and in the manner such agreements are in effect on the Issue Date;

(vii) purchase money obligations for property acquired in the ordinary course of business or Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (c) above on the property so acquired;

(viii) contracts for the sale of assets, including, without limitation, customary restrictions with respect to a Restricted Subsidiary of the Company pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Restricted Subsidiary;

(ix) secured Indebtedness otherwise permitted to be incurred pursuant to Sections 4.4 and 4.16 that limit the right of the debtor to dispose of the assets securing such Indebtedness;

(x) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(xi) customary net worth and restrictions on transfer, assignment or subletting provisions contained in leases and other agreements entered into by the Company or any Restricted Subsidiary;

(xii) any restriction in any agreement or instrument of a Receivables Entity governing a Qualified Receivables Transaction; provided that such restrictions apply only to such Receivables Entity or Receivables and Related Assets;

(xiii) any agreement governing Indebtedness incurred to Refinance the Indebtedness issued, assumed or incurred pursuant to an agreement referred to in clauses (i) through (xii) above; provided, however, that the provisions relating to such encumbrance or restriction contained in any such Indebtedness, taken as a whole, are no less favorable to the Company in any material respect as determined by the Board of Directors of the Company in its reasonable and good faith judgment than the provisions relating to such encumbrance or restriction contained in agreements referred to in such clauses; or

(xiv) any agreement governing Indebtedness permitted to be incurred pursuant to Section 4.4; provided that the provisions relating to such encumbrance or restriction contained in such Indebtedness, taken as a whole, are no less favorable to the Company in any material respect as determined by the Board of Directors of the Company in its reasonable and good faith judgment than the provisions contained in the Credit Agreement or in this Indenture as in effect on the Issue Date.

4.14. Limitation on the Issuance and Sale of Capital Stock of Restricted Subsidiaries .

The Company shall not sell, and shall not permit any Restricted Subsidiary of the Company, directly or indirectly, to issue or sell, any shares of Capital Stock of a Restricted Subsidiary (including options, warrants or other rights to purchase shares of such Capital Stock) except:

(a) to the Company or a Wholly Owned Restricted Subsidiary of the Company;

(b) issuance of directors' qualifying shares or sales to foreign nationals of shares of Capital Stock of Foreign Restricted Subsidiaries of the Company, to the extent required by applicable law;

(c) if, immediately after giving effect to such issuance or sale, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary of the Company and any Investment in such Person remaining after giving effect to such issuance or sale would have been permitted to be made under Section 4.3 if made on the date of such issuance or sale; or

(d) the sale or issuance of Common Stock that is Qualified Capital Stock of a Restricted Subsidiary of the Company, if the proceeds from such issuance and sale are applied in accordance with Section 4.18.

4.15. Limitation on Issuances of Guarantees by Restricted Subsidiaries .

The Company shall not permit any Restricted Subsidiary of the Company, directly or indirectly, to guarantee any Indebtedness of the Company or any Indebtedness of any Domestic Restricted Subsidiary of the Company, unless (i) such Restricted Subsidiary simultaneously executes and delivers a supplemental indenture to this Indenture providing for a senior secured Guarantee of payment of the Securities by such Restricted Subsidiary and (ii) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee so long as any Securities remain outstanding.

Notwithstanding the foregoing, or Section 4.20, any Guarantee by a Restricted Subsidiary may provide by its terms that it shall be automatically and unconditionally released and discharged upon (i) any sale, exchange or transfer, to any Person not an Affiliate of the Company, of all of the Company's and each Restricted Subsidiary's Capital Stock in, or all or substantially all the assets of, such Restricted Subsidiary (which sale, exchange or transfer is not prohibited by this Indenture), (ii) the release or discharge of the guarantee, if any, which resulted in the creation of such Guarantee, except a discharge or release by or as a result of payment under such guarantee or (iii) the designation of such Restricted Subsidiary as an Unrestricted Subsidiary in accordance with the provisions of this Indenture.

4.16. Limitation on Liens.

The Company shall not, and shall not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or permit or suffer to exist any Liens of any kind against or upon any property or assets of the Company or any of its Restricted Subsidiaries whether owned on the Issue Date or acquired after the Issue Date, or any proceeds there

from, or assign or otherwise convey any right to receive income or profits therefrom unless such Lien relates to assets not constituting Collateral and:

(a) in the case of Liens securing Indebtedness that is expressly subordinate or junior in right of payment of the Securities, the Securities are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; and

(b) in all other cases, the Securities are equally and ratably secured,

except for the following Liens, which are expressly permitted:

(i) Liens existing as of the Issue Date;

(ii) Liens securing Indebtedness under the Credit Agreement permitted to be incurred pursuant to clause (2) of the definition of "Permitted Indebtedness"; provided that the holders of such Liens agree to be bound by the provisions of the Security Documents;

(iii) Liens securing Indebtedness constituting Senior Debt incurred in compliance with the terms of this Indenture in an amount not to exceed 12% of the Consolidated Net Tangible Assets of the Issuer; provided that (i) after giving effect to the incurrence of such Senior Debt (and the application of the proceeds therefrom, including to the repayment of Indebtedness or to the acquisition of any assets) and the Lien related thereto, the Asset Coverage Ratio is greater than it was immediately prior to the incurrence of such Senior Debt and the Lien related thereto and (ii) the holders of such Liens agree to be bound by the provisions of the Security Documents;

(iv) Liens securing Obligations up to $10.0 million under a letter of credit facility (including, without limitation, the Credit Agreement); provided that the holders of such Liens agree to be bound by the provisions of the Security Documents;

(v) Liens on Collateral securing Indebtedness incurred in compliance with the terms of this Indenture; provided that such Liens are junior in priority to the Liens securing the Securities on substantially the same terms as the Liens securing the Securities are junior in priority to the Liens securing the First-Lien Obligations and such Liens are granted pursuant to the Security Documents;

(vi) Liens securing the Initial Notes issued on the Issue Date and the Exchange Notes with respect to the Initial Notes and any Guarantee thereof;

(vii) Liens in favor of the Company or a Wholly Owned Restricted Subsidiary of the Company on assets of any Restricted Subsidiary of the Company; provided

that such Liens are either junior in priority to the Liens securing the Securities or are not secured by Collateral;

(viii) Liens securing Refinancing Indebtedness which is incurred to Refinance any Indebtedness (including, without limitation, Acquired Indebtedness) which has been secured by a Lien permitted under this Indenture and which has been incurred in accordance with the provisions of this Indenture; provided, however, that such Liens:

(1) are no less favorable to the Holders and are not more favorable to the lienholders with respect to such Liens than the Liens in respect of the Indebtedness being Refinanced; and

(2) do not extend to or cover any property or assets of the Company or any of its Restricted Subsidiaries not securing the Indebtedness so Refinanced;

(ix) Liens securing Indebtedness of Restricted Subsidiaries of the Company that are not Guarantors so long as such Indebtedness is otherwise permitted under this Indenture; and

(x) Permitted Liens.

4.17. Change of Control.

(a) Upon the occurrence of a Change of Control, the Company shall be obligated to make an offer to purchase (the " Change of Control Offer"), and shall purchase, on a Business Day (the "Change of Control Payment Date") as described below, all or a portion of the then outstanding Securities at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the Change of Control Payment Date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date). The Change of Control Offer shall remain open for at least 20 Business Days and until the close of business on the Change of Control Payment Date. Notwithstanding the occurrence of a Change of Control, the Company shall not be obligated to repurchase the Securities pursuant to this Section 4.17 in the event that the Company has exercised its right to redeem all the Securities under the terms of Article Three of this Indenture and paragraph 5 of the Securities.

(b) Prior to the mailing of the notice referred to below, but in any event within 30 days following any Change of Control, the Company covenants to:

(i) repay in full all outstanding Obligations under the Credit Agreement and terminate all related commitments; or

(ii) obtain the requisite consents, if any, under the Credit Agreement to permit the repurchase of the Securities as provided below.

The Company shall first comply with this clause (b) before it shall be required to repurchase Securities pursuant to the provisions described below. The Company's failure to comply with this clause (b) (and any failure to send the notice referred to in clause (c) below because the same is prohibited by this clause (b)) may (with notice and lapse of time) constitute an Event of Default described in clause (iii) of Section 6.1 but shall not constitute an Event of Default described in clause (ii) of Section 6.1.

(c) Within 30 days following the date upon which a Change of Control occurs, the Company shall send, by first class mail, a notice to each Holder, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer. The notice to the Holders shall contain all instructions and materials necessary to enable such Holders to tender Securities pursuant to the Change of Control Offer. Such notice shall state:

(i) that the Change of Control Offer is being made pursuant to this Section 4.17 and that all Securities tendered and not withdrawn will be accepted for payment;

(ii) the purchase price (including the amount of accrued interest) and the Change of Control Payment Date, which shall be a Business Day, that is not earlier than 30 days or later than 60 days from the date such notice is mailed, other than as may be required by law;

(iii) that any Security not tendered will continue to accrue interest;

(iv) that, unless the Company defaults in making payment therefor, any Security accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest after the Change of Control Payment Date;

(v) that Holders electing to have a Security purchased pursuant to a Change of Control Offer will be required to surrender the Security, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Security completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day prior to the Change of Control Payment Date;

(vi) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the second Business Day prior to the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Securities the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Security purchased;

(vii) that Holders whose Securities are purchased only in part will be issued new Securities in a principal amount equal to the unpurchased portion of the Securities surrendered; and

(viii) the circumstances and relevant facts regarding such Change of Control.

The Company shall not be required to make a Change of Control Offer upon a Change of Control if any other Person makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.17 applicable to a Change of Control Offer made by the Company and purchases all Securities validly tendered and not withdrawn under such Change of Control Offer. The provisions of this Section 4.17 and other provisions contained in this Indenture relating to the Company's obligation to make a Change of Control Offer may be waived or modified with the written consent of the Holders of a majority in principal amount of Securities.

On or before the Change of Control Payment Date, the Company shall (i) accept for payment Securities or portions thereof tendered pursuant to the Change of Control Offer, (ii) deposit with the Paying Agent U.S. Legal Tender sufficient to pay the purchase price plus accrued interest, if any, of all Securities so tendered and (iii) deliver to the Trustee Securities so accepted together with an Officers' Certificate stating the Securities or portions thereof being purchased by the Company. The Paying Agent shall promptly mail to the Holders of Securities so accepted payment in an amount equal to the purchase price plus accrued interest, if any, and upon written order of the Company the Trustee shall promptly authenticate and mail to such Holders new Securities equal in principal amount to any unpurchased portion of the Securities surrendered. Any Securities not so accepted shall be promptly mailed by the Company to the Holder thereof. For purposes of this Section 4.17, the Trustee shall act as the Paying Agent.

Any amounts remaining with the Paying Agent after the purchase of Securities pursuant to a Change of Control Offer shall be returned by the Trustee to the Company.

The Company shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of Securities pursuant to a Change of Control Offer. To the extent the provisions of any securities laws or regulations conflict with the provisions of this Section 4.17, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.17 by virtue thereof.

4.18. Limitation on Asset Sales.

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(i) the Company or the applicable Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value of the assets sold or otherwise disposed of (as determined in good faith by the Company's senior management or, in the case of an Asset Sale in excess of $4.0 million, the Board of Directors of the Company);

(ii) at least 75% of the consideration received by the Company or the Restricted Subsidiary, as the case may be, from such Asset Sale shall be in the form of (x) cash or Cash Equivalents, (y) properties and assets to be owned by the Company or any of its Restricted Subsidiaries and used in a Permitted Business; provided that they are concurrently with their acquisition added to the Collateral securing the Securities to the extent required by the Security Documents, or (z) Capital Stock in one or more Persons engaged in a Permitted Business that are or thereby become Restricted Subsidiaries of the Company; provided, further, that the properties and assets of such Person are concurrently with the acquisition added to the Collateral securing the Securities to the extent required by the Security Documents, and, in each case, such consideration is received at the time of such disposition; provided, further, however, that the amount of (a) any liabilities (as shown on the Company's or such Restricted Subsidiary's most recent balance sheet) of the Company or such Restricted Subsidiary (other than (A) liabilities that are unsecured or secured by Liens junior to the Lien on the Collateral securing the Securities and (B) liabilities that are by their terms subordinated to the Securities) that are assumed by the transferee of any such assets, and (b) any notes or other securities received by the Company or any such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash within 30 days after such Asset Sale (to the extent of the cash received) shall be deemed to be cash for the purposes of this provision only; and

(iii) upon the consummation of an Asset Sale, the Company shall apply, or cause such Restricted Subsidiary to apply, the Net Cash Proceeds relating to such Asset Sale within 365 days of receipt thereof either:

(A) to prepay any First-Lien Obligations and, in the case of any First-Lien Obligations under any revolving credit facility, effect a permanent reduction in the availability under such revolving credit facility (or effect a permanent reduction in availability under such revolving credit facility regardless of the fact that no prepayment is required);

(B) to make an Investment (x) in properties and assets that replace the properties and assets that were the subject of such Asset Sale or (y) in properties and assets that will be used by the Company or a Restricted Subsidiary in a Permitted Business; or

(C) a combination of prepayment and investment permitted by the foregoing clauses (iii)(A) and (iii)(B).

Pending the final application of the Net Cash Proceeds, the Company and its Restricted Subsidiaries may temporarily reduce Indebtedness that constitutes First-Lien Obligations or otherwise invest such Net Cash Proceeds in any manner not prohibited by this Indenture.

On the 366th day after an Asset Sale or such earlier date, if any, as the Board of Directors of the Company or of such Restricted Subsidiary determines not to apply the Net Cash Proceeds relating to such Asset Sale as set forth in clauses (iii)(A), (iii)(B) and (iii)(C) of the next preceding paragraph (each, a " Net Proceeds Offer Trigger Date"), such aggregate amount of Net Cash Proceeds which have not been applied on or before such Net Proceeds Offer Trigger Date as permitted in clauses (iii)(A), (iii)(B) and (iii)(C) of the next preceding paragraph (each a " Net Proceeds Offer Amount") shall be applied by the Company or such Restricted Subsidiary to make an offer to purchase (the " Net Proceeds Offer") on a date (the "Net Proceeds Offer Payment Date") not less than 30 nor more than 60 days following the applicable Net Proceeds Offer Trigger Date, from all Holders on a pro rata basis, that amount of Securities equal to the Net Proceeds Offer Amount at a price equal to 100% of the principal amount of the Securities to be purchased, plus accrued and unpaid interest thereon, if any, to the date of purchase.

If at any time any non-cash consideration received by the Company or any Restricted Subsidiary of the Company, as the case may be, in connection with any Asset Sale is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then such conversion or disposition shall be deemed to constitute an Asset Sale hereunder as of the date of such conversion or disposition and the Net Cash Proceeds thereof shall be applied in accordance with this Section 4.18. If the First-Lien Obligations Termination Date has occurred at the time of the receipt of Net Cash Proceeds from an Asset Sale involving Collateral, such Net Cash Proceeds shall be delivered to and held by the Trustee as Trust Monies for the benefit of the Notes Secured Creditors pending any use permitted by this Section 4.18.

The Company may defer the Net Proceeds Offer until there is an aggregate unutilized Net Proceeds Offer Amount equal to or in excess of $10.0 million resulting from one or more Asset Sales (at which time, the entire unutilized Net Proceeds Offer Amount, and not just the amount in excess of $10.0 million, shall be applied as required pursuant to the second preceding paragraph of this Section 4.18).

In the event of the transfer of substantially all (but not all) of the property and assets of the Company and its Restricted Subsidiaries as an entirety to a Person in a transaction permitted under Section 5.1, which transaction does not constitute a Change of Control, the successor corporation shall be deemed to have sold the properties and assets of the Company and its

Restricted Subsidiaries not so transferred for purposes of this Section, and shall comply with the provisions of clause (iii) of this Section 4.18 with respect to such deemed sale as if it were an Asset Sale. In addition, the fair market value of such properties and assets of the Company or its Restricted Subsidiaries deemed to be sold shall be deemed to be Net Cash Proceeds for purposes of this Section 4.18.

Notice of each Net Proceeds Offer pursuant to this Section 4.18 shall be mailed or caused to be mailed, by first class mail, by the Company within 25 days following the applicable Net Proceeds Offer Trigger Date to all Holders at their last registered addresses, with a copy to the Trustee. A Net Proceeds Offer shall remain open for a period of 20 Business Days or such longer period as may be required by law. The notice shall contain all instructions and materials necessary to enable such Holders to tender Securities pursuant to the Net Proceeds Offer and shall state the following terms:

(1) that Holders may elect to have their Securities purchased by the Company either in whole or in part (subject to proration as hereinafter described in the event the Net Proceeds Offer is oversubscribed) in integral multiples of $1,000 of principal amount, at the applicable purchase price;

(2) that the Net Proceeds Offer is being made pursuant to this Section 4.18 and that all Securities tendered will be accepted for payment; provided, however, that if the principal amount of Securities tendered in the Net Proceeds Offer exceeds the aggregate amount of the Net Proceeds Offer Amount, the Company shall select the Securities to be purchased on a pro rata basis (based on amounts tendered);

(3) the purchase price (including the amount of accrued interest, if any) and the Net Proceeds Offer Purchase Date (which shall be no earlier than 30 days nor later than 60 days from the Net Proceeds Offer Trigger Date, other than as may be required by applicable law);

(4) that any Security not tendered will continue to accrue interest;

(5) that, unless the Company defaults in making payment therefor, any Security accepted for payment pursuant to the Net Proceeds Offer shall cease to accrue interest after the Net Proceeds Offer Payment Date;

(6) that Holders electing to have a Security purchased pursuant to the Net Proceeds Offer will be required to surrender the Security, with the form entitled “Option of Holder to Elect Purchase” on the reverse of the Security completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day prior to the Net Proceeds Offer Payment Date;

(7) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the second Business Day prior to the Net Proceeds Offer Payment Date, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Security purchased; and

(8) that Holders whose Securities are purchased only in part will be issued new Securities in a principal amount at maturity equal to the unpurchased portion of the Securities surrendered.

On or before the Net Proceeds Offer Payment Date, the Company shall (i) accept for payment Securities or portions thereof tendered pursuant to the Net Proceeds Offer, (ii) deposit with the Paying Agent U.S. Legal Tender sufficient to pay the purchase price, plus accrued interest, if any, of all Securities to be purchased and (iii) deliver to the Trustee Securities so accepted together with an Officers' Certificate stating the Securities or portions thereof being purchased by the Company. The Paying Agent shall promptly mail to the Holders of Securities so accepted payment in an amount equal to the purchase price, plus accrued interest, if any, thereon, set forth in the notice of such Net Proceeds Offer. Any Security not so accepted shall be promptly mailed by the Company to the Holder thereof. For purposes of this Section 4.18, the Trustee shall act as the Paying Agent.

Any amounts remaining after the purchase of Securities pursuant to a Net Proceeds Offer shall be returned by the Trustee to the Company. To the extent that the aggregate amount of the Securities tendered pursuant to a Net Proceeds Offer is less than the Net Proceeds Offer Amount, the Company may use such excess Net Proceeds Offer Amount for general corporate purposes or for any other purposes not prohibited by this Indenture. Upon completion of any such Net Proceeds Offer, the Net Proceeds Offer Amount shall be reset at zero.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of Securities pursuant to a Net Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.18, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.18 by virtue thereof. The provisions of this Section 4.18 and other provisions contained in this Indenture relating to the Company's obligation to make a Net Proceeds Offer may be waived or modified with the written consent of the Holders of a majority in principal amount of the Securities.

4.19. Impairment of Security Interest.

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, take, or knowingly omit to take, any action, which action or omission would have the effect of causing a Lien to be created in favor of the Collateral Agent or the Bank Lenders (in their respective capacities as such) on any property or assets of the type that would constitute Collateral unless a Lien is created in favor of the Collateral Agent for the benefit of the Notes Secured Creditors with respect to such property or assets (which Lien in favor of the Notes Secured Creditors shall have the priority set forth in the Security Documents). Such Lien in favor of the Collateral Agent for the benefit of the Notes Secured Creditors shall at all times be in accordance with the provisions of this Indenture and the Security Documents.

4.20. Future Guarantors.

(a) If the Company organizes or acquires any Domestic Restricted Subsidiary after the Issue Date (each a " New Domestic Restricted Subsidiary ") having total assets with a book value in excess of $500,000, the Company shall: (i) execute and deliver to the Trustee (A) a supplemental indenture in form reasonably satisfactory to the Trustee pursuant to which each such New Domestic Restricted Subsidiary shall unconditionally guarantee all of the Company's obligations under the Securities and this Indenture and (B) supplemental Security Documents; (ii) deliver to the Trustee an Opinion of Counsel that each such supplemental indenture and supplemental Security Document has been duly authorized, executed and delivered by such New Domestic Restricted Subsidiary and constitutes a legal, valid, binding and enforceable obligation of such New Domestic Restricted Subsidiary; and (iii) cause each New Domestic Restricted Subsidiary to promptly execute and deliver to the Trustee a Guarantee.

(b) After the execution of a supplemental indenture pursuant to clause (a) of this Section 4.20, each such New Domestic Restricted Subsidiary party thereto shall be a Guarantor for all purposes of this Indenture.

(c) In addition to the requirements set forth in Section 4.20(a) above, the following additional requirements shall apply:

(i) the Company and the new Guarantor will cause to be filed such amendments or other instruments, if any, and recorded in such jurisdictions as may be required by applicable law to perfect, preserve and protect the Lien of the Security Documents on the Collateral owned by or transferred to such new Guarantor, together with such financing statements as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement under the Uniform Commercial Code of the relevant states;

(ii) any Collateral owned by or transferred to the new Guarantor shall: (a) continue to constitute Collateral under this Indenture and the Security Documents; and (b) not be subject to any Lien other than Liens permitted by this Indenture and the Security Documents; and

(iii) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such supplemental indenture and Security Documents comply with the applicable provisions of this Indenture, that all conditions precedent in this Indenture relating to such transaction have been satisfied and that such supplemental indenture and Security Documents are enforceable, subject to customary qualifications.

4.21. Excess Cash Flow.

(a) Within 120 days after the end of each Excess Cash Flow Period, the Company shall apply an amount equal to the Excess Cash Flow Amount to either:

(i) prepay, repay, redeem or purchase First-Lien Obligations of the Company; or

(ii) make an offer to all Holders to purchase Securities pursuant to an Excess Cash Flow Offer (as defined below).

Each offer to purchase Securities pursuant to this Section 4.21 (each, an " Excess Cash Flow Offer") shall be made to each Holder at the time of such offer, shall offer to purchase Securities at a purchase price of 104% of their principal amount and shall remain open for a period of not less than 20 Business Days (or any longer period as is required by law).

(b) If the Company is required to make an Excess Cash Flow Offer pursuant to this Section 4.21, no later than 120 days after the end of the applicable Excess Cash Flow Period, the Company shall mail a notice of such Excess Cash Flow Offer to each Holder stating:

(i) that the Company is offering to purchase Securities in an amount equal to the Excess Cash Flow Amount (determined after giving effect to any prepayments, repayments, redemptions or purchases of First-Lien Obligations of the Company made pursuant to Section 4.21(a)(i)) at a purchase price in cash equal to 104% of the principal amount thereof on the date of purchase, plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of Holders of record on the relevant date to receive interest on the relevant interest payment date);

(ii) the purchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed); and

(iii) the instructions, as determined by the Company, consistent with the covenant described hereunder, that a Holder must follow in order to tender its Securities.

(c) If the aggregate purchase price of the Securities tendered in connection with any Excess Cash Flow Offer exceeds the Excess Cash Flow Amount allotted to their purchase, the Trustee will select the Securities to be purchased on a pro rata basis but in denominations of $1,000 principal amount or multiples thereof. If the aggregate purchase price of the Securities tendered in connection with any Excess Cash Flow Offer is less than the Excess Cash Flow Amount allotted to their purchase, the Company shall be permitted to use the portion of the Excess Cash Flow Amount that is not applied to the purchase of Securities in connection with such Excess Cash Flow Offer for general corporate purposes or for any other purposes not prohibited by this Indenture. To the extent the Excess Cash Flow Amount for any Excess Cash Flow Period is less than $1.0 million, the Company may elect not to make an Excess Cash Flow Offer for such Excess Cash Flow Period and, in lieu thereof add such Excess Cash Flow to the amount of Excess Cash Flow for the next succeeding Excess Cash Flow Period. Upon completion of an Excess Cash Flow Offer, the Excess Cash Flow Amount with respect thereto will be deemed to be reduced by the aggregate amount of such Excess Cash Flow Offer.

(d) The Company shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of Securities pursuant to an Excess Cash Flow Offer. To the extent the provisions of any securities laws or regulations conflict with the provisions of this Section 4.21, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.21 by virtue thereof. This Section 4.21 may be waived or modified with the written consent of the Holders of a majority in principal amount of the Securities.

4.22. Payments for Consent.

Neither the Company nor any of its Restricted Subsidiaries shall, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Securities unless such consideration is offered to be paid and is paid to all Holders that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement

ARTICLE V

SUCCESSOR CORPORATION

5.1. Merger, Consolidation and Sale of Assets.

(a) The Company shall not, in a single transaction or series of related transactions, consolidate or merge with or into any Person, or sell, assign, transfer, lease, convey or otherwise dispose of (or cause or permit any Restricted Subsidiary of the Company to sell, assign, transfer, lease, convey or otherwise dispose of) all or substantially all of the Company's assets (determined on a consolidated basis for the Company and the Company's Restricted Subsidiaries) whether as an entirety or substantially as an entirety to any Person unless:

(i) either (A) the Company shall be the surviving or continuing corporation or (B) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Company and of the Company's Restricted Subsidiaries substantially as an entirety (the " Surviving Entity"):

(x) shall be a corporation organized and validly existing under the laws of the United States or any State thereof or the District of Columbia; and

(y) shall expressly assume, (i) by supplemental indenture (in form and substance reasonably satisfactory to the Trustee), executed and delivered to the Trustee, the due and punctual payment of the principal of, and premium, if any, and interest on all of the Securities and the performance of every covenant of the Securities and this Indenture on the part of the Company to be performed or observed, and (ii) all the obligations under the Security Documents;

(ii) immediately after giving effect to such transaction on a pro forma basis and the assumption contemplated by clause (a)(i)(B)(y) above (including giving effect to any Indebtedness and Acquired Indebtedness incurred or anticipated to be incurred in connection with or in respect of such transaction), the Company or such Surviving Entity, as the case may be, shall be able to incur at least $1.00 of additional Indebtedness (other than Permitted Indebtedness) pursuant to Section 4.4;

(iii) immediately before and immediately after giving effect to such transaction on a pro forma basis and the assumption contemplated by clause (a)(i)(B)(y) above (including, without limitation, giving effect to any Indebtedness and Acquired Indebtedness incurred or anticipated to be incurred or repaid and any Lien granted or to be released in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing; and

(iv) the Company or the Surviving Entity, as the case may be, shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with the applicable provisions of this Indenture and that all conditions precedent in this Indenture relating to such transaction have been satisfied.

Notwithstanding the foregoing, (1) the merger of the Company with an Affiliate incorporated solely for the purpose of reincorporating the Company in another jurisdiction shall be permitted and (2) the merger of any Restricted Subsidiary of the Company into the Company or the transfer, lease, conveyance or other disposition of all or substantially all of the assets of a Restricted Subsidiary of the Company to the Company shall be permitted so long as the Company delivers to the Trustee an Officers' Certificate stating that the purpose of such merger, transfer, lease, conveyance or other disposition is not to consummate a transaction that would otherwise be prohibited by clause (iii) of this Section 5.1(a).

(b) For purposes of Section 5.1(a), the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries of the Company, the Capital Stock of which constitutes all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

(c) The following additional conditions shall apply to each transaction described in Section 5.01(a) above:

(i) the Company or the relevant surviving entity, as applicable, will cause to be filed such amendments or other instruments, if any, and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Lien of the Security Documents on the Collateral owned by or transferred to such Person, together with such financing statements as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement under the Uniform Commercial Code of the relevant states;

(ii) the Collateral owned by or transferred to the Company or the relevant surviving entity, as applicable, shall: (a) continue to constitute Collateral under this Indenture and the Security Documents; and (b) not be subject to any Lien other than Liens permitted by this Indenture and the Security Documents;

(iii) the assets of the Person which is merged or consolidated with or into the relevant surviving entity, to the extent that they are assets of the types which would constitute Collateral under the Security Documents and which would be

required to be pledged thereunder, shall be treated as after-acquired property and such surviving entity shall take such action as may be reasonably necessary to cause such assets to be made subject to the Lien of the Security Documents in the manner and to the extent required in this Indenture; and

(iv) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such transaction and, if a supplemental indenture or supplemental Security Documents, are required in connection with such transaction, such supplemental indenture and Security Documents comply with the applicable provisions of this Indenture, that all conditions precedent in this Indenture relating to such transaction have been satisfied and that such supplemental indenture and Security Documents are enforceable, subject to customary qualifications.

(d) Each Guarantor (other than any Guarantor whose Guarantee is to be released in accordance with the terms of such Guarantee and this Indenture in connection with any transaction complying with the provisions of Section 4.18) shall not, and the Company shall not cause or permit any Guarantor to, consolidate with or merge with or into any Person other than the Company or any other Guarantor unless:

(i) the Person formed by or surviving any such consolidation or merger (if other than the Guarantor) or to which such sale, lease, conveyance or other disposition shall have been made is a corporation, partnership or limited liability company organized and validly existing under the laws of the United States, any State thereof, the District of Columbia thereof or the jurisdiction in which such Guarantor is organized;

(ii) such Person expressly assumes (a) by supplemental indenture all of the obligations of the Guarantor on its Guarantee and (b) the obligations of the Guarantor under the Security Documents;

(iii) immediately after giving effect to such transaction on a pro forma basis, no Default or Event of Default shall have occurred and be continuing; and

(iv) immediately after giving effect to such transaction and the use of any net proceeds therefrom on a pro forma basis, the Company could satisfy the provisions of clause (ii) of Section 5.1(a).

Any merger or consolidation of a Guarantor with and into the Company (with the Company being the surviving entity) or another Guarantor that is a Wholly Owned Restricted Subsidiary of the Company need only comply with clause (iv) of Section 5.1(a).

5.2. Successor Corporation Substituted.

Upon any consolidation, combination or merger or any transfer of all or substantially all of the assets of the Company in accordance with Section 5.1 in which the Company or any Guarantor, as applicable, is not the continuing corporation, the successor Person formed by such consolidation or into which the Company or such Guarantor is merged or to which such conveyance, lease or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company or such Guarantor under this Indenture and the Securities or any Guarantee, as applicable, with the same effect as if such Surviving Entity had been named as such.

ARTICLE VI

DEFAULT AND REMEDIES

6.1. Events of Default.

Each of the following shall be an "Event of Default":

(i) the failure to pay interest on any Securities when the same becomes due and payable and the default continues for a period of 30 days;

(ii) the failure to pay the principal on any Securities, when such principal becomes due and payable, at maturity, upon redemption or otherwise (including the failure to make a payment to purchase Securities tendered pursuant to a Change of Control Offer or a Net Proceeds Offer);

(iii) a default by the Company or any Restricted Subsidiary of the Company in the observance or performance of any other covenant or agreement contained in this Indenture or the Security Documents, which default continues for a period of 45 days after the Company receives written notice specifying the default (and demanding that such default be remedied) from the Trustee or from the Holders of at least 25% of the outstanding principal amount of the Securities;

(iv) the failure to pay at final stated maturity (giving effect to any applicable grace periods and any extensions thereof) the principal amount of any Indebtedness of the Company or the Indebtedness of any Restricted Subsidiaries of the Company, or the acceleration of the final stated maturity of any such Indebtedness by the holders thereof if the aggregate principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at final stated maturity or which has been accelerated, exceeds $7.5 million or more at any time;

(v) one or more judgments in an aggregate amount in excess of $7.5 million shall have been rendered against the Company or any of its Restricted Subsidiaries and such judgments remain undischarged, unpaid or unstayed for a period of 60 days after such judgment or judgments become final and non-appealable;

(vi) the Company or any of its Significant Subsidiaries (i) commences a voluntary case or proceeding under any Bankruptcy Law with respect to itself, (ii) consents to the entry of a judgment, decree or order for relief against it in an involuntary case or proceeding under any Bankruptcy Law, (iii) consents to the appointment of a custodian of it or for substantially all of its property, (iv) consents to or acquiesces in the institution of a bankruptcy or an insolvency proceeding against it, (v) makes a general assignment for the benefit of its creditors or (vi) takes any corporate action to authorize or effect any of the foregoing;

(vii) a court of competent jurisdiction enters a judgment, decree or order for relief in respect of the Company or any of its Significant Subsidiaries in an involuntary case or proceeding under any Bankruptcy Law, which shall (i) approve as properly filed a petition seeking reorganization, arrangement, adjustment or composition in respect of the Company or any of its Significant Subsidiaries, (ii) appoint a Custodian of the Company or any of its Significant Subsidiaries or for substantially all of any of its property or (iii) order the winding-up or liquidation of its affairs; and such judgment, decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

(viii) any Guarantee of a Significant Subsidiary ceases to be in full force and effect or any Guarantee made by a Significant Subsidiary is declared to be null and void and unenforceable or any Guarantee made by a Significant Subsidiary is found to be invalid or any such Guarantor denies its liability under its Guarantee (other than by reason of release of a Guarantor in accordance with the terms of this Indenture); or

(ix) so long as the Security Documents have not otherwise been terminated in accordance with their terms or the Collateral as a whole has not otherwise been released from the Lien of the Security Documents in accordance with the terms hereof and thereof, (a) a default by the Company or any Guarantor which is a Significant Subsidiary in the performance of the Security Documents which materially and adversely affects the enforceability, validity, perfection or priority of the Lien granted to the Collateral Agent on the Collateral, in each case taken as a whole, (b) a repudiation or disaffirmation by the Company or any Guarantor that is a Significant Subsidiary of the Company's or such Guarantor's material obligations under the Security Documents or (c) the determination in a judicial proceeding that all or any material portion of the Security Documents, taken as a whole, are unenforceable or invalid against the Company or any Guarantor that is a Significant Subsidiary for any reason.

If, pursuant to clause (iii) above, the Holders of at least 25% of the then outstanding principal amount of Securities notify the Company as specified in such clause, such Holders shall similarly notify the Trustee. Any notice given pursuant to clause (iii) above or the immediately preceding sentence shall be given by registered or certified mail, return receipt requested.

6.2. Acceleration.

If an Event of Default (other than an Event of Default specified in clause (vi) or (vii) of Section 6.1 above with respect to the Company) shall occur and be continuing, the Trustee or the Holders of at least 25% in principal amount of outstanding Securities may declare the principal of, premium, if any, and accrued interest on all the Securities to be due and payable by notice in writing to the Company and the Trustee specifying the respective Event of Default and that it is a "notice of acceleration" (the "Acceleration Notice"), and the same (i) shall become immediately due and payable or (ii) if there are any amounts of First-Lien Obligations outstanding under the Credit Agreement, shall become immediately due and payable upon the first to occur of an acceleration under the Credit Agreement or five (5) Business Days after receipt by the Company and the representative of the creditors holding First-Lien Obligations under the Credit Agreement of such Acceleration Notice (but only if such Event of Default is then continuing). If an Event of Default specified in clause (vi) or (vii) of Section 6.1 above with respect to the Company occurs and is continuing, then all unpaid principal of, and premium, if any, and accrued and unpaid interest on all of the outstanding Securities shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

At any time after a declaration of acceleration with respect to the Securities as described in the preceding paragraph, the Holders of a majority in principal amount of the Securities may rescind and cancel such declaration and its consequences (i) if the rescission would not conflict with any judgment or decree, (ii) if all existing Events of Default have been cured or waived except non-payment of principal, premium, if any, or interest that has become due solely because of the acceleration, (iii) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal and premium if any, which has become due otherwise than by such declaration of acceleration, has been paid, (iv) if the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances, and any other amounts due to the Trustee under Section 7.7 and (v) in the event of the cure or waiver of an Event of Default of the type described in clause (vi) or (vii) of Section 6.1, the Trustee shall have received an Officers' Certificate and an Opinion of Counsel that such Event of Default has been cured or waived. No such rescission shall affect any subsequent Default or Event of Default or impair any right consequent thereon.

6.3. Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of, premium, if any, or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

6.4. Waiver of Past Defaults.

Subject to Sections 2.9, 6.2, 6.7 and 9.2, the Holders of not less than a majority in principal amount of the outstanding Securities by notice to the Trustee may waive an existing Default or Event of Default and its consequences, except a Default or Event of Default in the payment of principal of, premium, if any, or interest on any Security as specified in clauses (i) and (ii) of Section 6.1. The Company shall deliver to the Trustee an Officers' Certificate stating that the requisite percentage of Holders have consented to such waiver and attaching copies of such consents. When a Default or Event of Default is waived, it is cured and ceases.

6.5. Control by Majority.

The Holders of not less than a majority in principal amount of the outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. Subject to Section 7.1, however, the Trustee may refuse to follow any direction that conflicts with any law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of another Securityholder, or that may involve the Trustee in personal liability.

6.6. Limitation on Suits.

A Securityholder may not pursue any remedy with respect to this Indenture or the Securities unless:

(i) the Holder gives to the Trustee written notice of a continuing Event of Default;

(ii) the Holder or Holders of at least 25% in principal amount of the outstanding Securities make a written request to the Trustee to pursue the remedy;

(iii) such Holder or Holders offer and, if requested, provide to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;

(iv) the Trustee does not comply with the request within 45 days after receipt of the request and the offer and, if requested, the provision of indemnity; and

(v) during such 45-day period the Holder or Holders of a majority in principal amount of the outstanding Securities do not give the Trustee a direction which, in the opinion of the Trustee, is inconsistent with the request.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over such other Securityholder.

6.7. Rights of Holders to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of, premium, if any, and interest on a Security, on or after the respective due dates expressed in such Security, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of the Holder.

6.8. Collection Suit by Trustee.

If an Event of Default in payment of principal, premium, if any, or interest specified in clause (i) or (ii) of Section 6.1 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer or any other obligor on the Securities for the whole amount of principal, premium, if any, and accrued interest and fees remaining unpaid, together with interest on overdue principal and premium, if any, and, to the extent that payment of such interest is lawful, interest on overdue installments of interest, in each case at the rate per annum borne by the Securities and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due to the Trustee under Section 7.7.

6.9. Trustee May File Proofs of Claim.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due to the Trustee under Section 7.7) and the Securityholders allowed in any judicial proceedings relating to the Issuer, their creditors or their property and shall be entitled and empowered to participate as a member, voting or otherwise, of any official committee appointed for such matter, to collect and receive any monies or other securities

or property payable or deliverable upon the conversion or exchange of the Securities or upon any such claims and to distribute the same, and any Custodian in any such judicial proceedings is hereby authorized by each Securityholder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agent and counsel, and any other amounts due the Trustee under Section 7.7. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding.

6.10. Priorities.

If the Trustee collects any money or property pursuant to this Article Six, it shall pay out the money or property in the following order:

First: to the Trustee for amounts due under Section 7.7;

Second: to Holders for interest accrued on the Securities, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for interest;

Third: to Holders for principal amounts and premium, if any, due and unpaid on the Securities, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal; and

Fourth: to the Issuer or, to the Guarantors as their respective interests may appear.

The Trustee, upon prior notice to the Issuer, may fix a record date and payment date for any payment to Securityholders pursuant to this Section 6.10.

6.11. Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7, or a suit by a Holder or Holders of more than 10% in principal amount of the outstanding Securities.

6.12. Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then, and in every such case, subject to any determination in such proceeding, the Issuer, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Issuer, Trustee and the Holders shall continue as though no such proceeding had been instituted.

6.13. Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or wrongfully taken Securities in Section 2.7, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

ARTICLE VII

TRUSTEE

7.1. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) Except during the continuance of an Event of Default:

(i) The Trustee need perform only those duties as are specifically set forth herein or in the TIA and no duties, covenants, responsibilities or obligations shall be implied in this Indenture against the Trustee.

(ii) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates (including Officers' Certificates) or opinions (including Opinions of Counsel) furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to

determine whether or not they conform to the requirements of this Indenture, but need not verify the contents thereof.

(c) Notwithstanding anything to the contrary herein, the Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) This paragraph does not limit the effect of paragraph (b) of this Section 7.1.

(ii) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(iii) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or to take or omit to take any action under this Indenture or take any action at the request or direction of Holders if it shall have reasonable grounds for believing that repayment of such funds is not assured to it.

(e) Every provision of this Indenture that in any way relates to the Trustee is subject to this Section 7.1.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) In the absence of bad faith, negligence or willful misconduct on the part of the Trustee, the Trustee shall not be responsible for the application of any money by any Paying Agent other than the Trustee.

7.2. Rights of Trustee.

Subject to Section 7.1:

(a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate and an Opinion of Counsel, which shall conform to the provisions of Section 13.5. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent (other than an agent who is an employee of the Trustee) appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers.

(e) The Trustee may consult with counsel and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate (including any Officers' Certificate), statement, instrument, opinion (including any Opinion of Counsel), notice, request, direction, consent, order, bond, debenture, or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled, upon reasonable notice to the Issuer, to examine the books, records, and premises of the Issuer, personally or by agent or attorney.

(h) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(i) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as duties.

(j) The Trustee shall not be charged with knowledge of any Default or Event of Default, of the identity of any Restricted Subsidiary or the existence of any Change of Control or Asset Sale unless either (i) a Responsible Officer shall have actual knowledge thereof or (ii) the Trustee shall have received written notice thereof from either of the Issuer or any Holder.

(k) Delivery of reports, information and documents to the Trustee under Section 4.10 is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of the covenants hereunder.

7.3. Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Issuer, its Subsidiaries (including any Guarantors) or their respective Affiliates with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

7.4. Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, any Guarantee or the Securities, it shall not be accountable for the Issuer's use of the proceeds from the Securities, and it shall not be responsible for any statement of the Issuer in this Indenture or any document issued in connection with the sale of Securities or any statement in the Securities other than the Trustee's certificate of authentication. The Trustee makes no representations with respect to the effectiveness or adequacy of this Indenture.

7.5. Notice of Default.

If a Default or an Event of Default occurs and is continuing and the Trustee receives actual notice of such Default or Event of Default, the Trustee shall mail to each Securityholder notice of the uncured Default or Event of Default within 60 days after such Default or Event of Default occurs. Except in the case of a Default or an Event of Default in payment of principal of, premium, if any, or interest on, any Security, including an accelerated payment and the failure to make payment on the Change of Control Payment Date pursuant to a Change of Control Offer or the Net Proceeds Offer Payment Date pursuant to a Net Proceeds Offer, the Trustee may withhold the notice if and so long as the Board of Directors, the executive committee, or a trust committee of directors and/or Responsible Officers, of the Trustee in good faith determines that withholding the notice is in the interest of the Securityholders.

7.6. Reports by Trustee to Holders.

Within 60 days after each May 15, beginning with the first May 15 following the date of this Indenture, the Trustee shall, to the extent that any of the events described in TIA § 313(a) occurred within the previous twelve months, but not otherwise, mail to each

Securityholder a brief report dated as of such date that complies with TIA § 313(a). The Trustee also shall comply with TIA §§ 313(b), 313(c) and 313(d).

A copy of each report at the time of its mailing to Securityholders shall be mailed to the Issuer and filed with the Commission and each securities exchange, if any, on which the Securities are listed.

The Issuer shall notify the Trustee if the Securities become listed on any securities exchange or of any delisting thereof and the Trustee shall comply with TIA § 313(d).

7.7. Compensation and Indemnity.

The Issuer and the Guarantors shall pay to the Trustee, from time to time, reasonable compensation for its services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer and the Guarantors shall reimburse the Trustee upon request for all reasonable disbursements, expenses and advances (including reasonable fees and expenses of counsel) incurred or made by it in addition to the compensation for its services, except any such disbursements, expenses and advances as may be attributable to the Trustee's negligence, bad faith or willful misconduct. Such expenses shall include the reasonable fees and expenses of the Trustee's agents and counsel.

The Issuer and the Guarantors shall indemnify the Trustee and its agents, employees, officers, stockholders and directors for, and hold them harmless against, any loss, liability or expense (including reasonable attorneys' fees and expenses) incurred by them except for such actions to the extent caused by any negligence, bad faith or willful misconduct on their part, arising out of or in connection with the acceptance or administration of this trust including the cost and expense of enforcing this Indenture and the Securities against the Issuer and the Guarantors (including this Section 7.7) including the reasonable costs and expenses of defending themselves against or investigating any claim (whether asserted by the Issuer, the Guarantors, any Holder or any other Person) or liability in connection with the exercise or performance of any of the Trustee's rights, powers or duties hereunder. The Trustee shall notify the Issuer and the Guarantors promptly of any claim asserted against the Trustee or any of its agents, employees, officers, stockholders and directors for which it may seek indemnity, provided that any failure to so notify the Issuer and the Guarantors shall not relieve the Issuer and the Guarantors of their indemnity obligations hereunder. The Issuer and the Guarantors may, subject to the approval of the Trustee, defend the claim and the Trustee shall cooperate in the defense. The Trustee and its agents, employees, officers, stockholders and directors subject to the claim may have separate counsel and the Issuer and the Guarantors shall pay the reasonable fees and expenses of such counsel; provided, however, that the Issuer and the Guarantors will not be required to pay such fees and expenses if, subject to the approval of the Trustee, it assumes the Trustee's defense and there is no conflict of interest between the Issuer and the Guarantors and the Trustee and its agents, employees, officers, stockholders and directors subject to the claim in connection with such defense as reasonably determined by the Trustee.

The Issuer and the Guarantors need not pay for any settlement made without their written consent, which consent will not be unreasonably withheld, delayed or conditioned. The Issuer and the Guarantors need not reimburse any expense or indemnify against any loss or liability to the extent incurred by the Trustee through its negligence, bad faith or willful misconduct.

To secure the Issuer's and the Guarantors' payment obligations in this Section 7.7, the Trustee shall have a Lien prior to the Securities against all money or property held or collected by the Trustee, in its capacity as Trustee (provided that any assets or money received in contravention of the Security Documents shall be applied as set forth in the Security Documents), except assets or money held in trust to pay principal of, premium, if any, or interest on particular Securities.

When the Trustee incurs expenses or renders services after an Event of Default specified in clause (vi) or (vii) of Section 6.1 occurs, such expenses and the compensation for such services shall be paid to the extent allowed under any Bankruptcy Law.

Notwithstanding any other provision in this Indenture, the foregoing provisions of this Section 7.7 shall survive the satisfaction and discharge of this Indenture or the appointment of a successor Trustee.

7.8. Replacement of Trustee.

The Trustee may resign at any time by so notifying the Issuer in writing. The Holders of a majority in principal amount of the outstanding Securities may remove the Trustee by so notifying the Issuer and the Trustee and may appoint a successor Trustee. The Issuer may remove the Trustee if:

(i) the Trustee fails to comply with Section 7.10;

(ii) the Trustee is adjudged bankrupt or insolvent;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuer shall notify each Holder of such event and shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the Securities may appoint a successor Trustee to replace the successor Trustee appointed by the Issuer.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Immediately after that, the retiring Trustee shall transfer, after payment of all sums then owing to the Trustee pursuant to Section 7.7, all property held by it as Trustee to the successor Trustee, subject to the Lien provided in Section 7.7, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee shall mail notice of its succession to each Securityholder.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer or the Holders of at least 10% in principal amount of the outstanding Securities may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding replacement of the Trustee pursuant to this Section 7.8, the Issuer's and the Guarantors' obligations under Section 7.7 shall continue for the benefit of the retiring Trustee.

7.9. Successor Trustee by Merger, Etc.

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the resulting, surviving or transferee corporation without any further act shall, if such resulting, surviving or transferee corporation is otherwise eligible hereunder, be the successor Trustee; provided that such corporation shall be otherwise qualified and eligible under this Article Seven.

7.10. Eligibility; Disqualification.

This Indenture shall always have a Trustee who satisfies the requirement of TIA §§ 310(a)(1), 310(a)(2) and 310(a)(5). The Trustee shall have a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition. In addition, if the Trustee is a corporation included in a bank holding company system, the Trustee, independently of the bank holding company, shall meet the capital requirements of TIA § 310(a)(2). The Trustee shall comply with TIA § 310(b); provided, however, that there shall be excluded from the operation of TIA § 310(b)(1) any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Issuer are outstanding, if the requirements for such exclusion set forth in TIA § 310(b)(1) are met. The provisions of TIA § 310 shall apply to the Issuer and any other obligor of the Securities.

7.11. Preferential Collection of Claims Against the Issuer .

The Trustee, in its capacity as Trustee hereunder, shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

ARTICLE VIII

DISCHARGE OF INDENTURE; DEFEASANCE

8.1. Termination of the Issuer's Obligations.

The Issuer may terminate its obligations under the Securities and this Indenture, except those obligations referred to in the penultimate paragraph of this Section 8.1, if all Securities previously authenticated and delivered (other than destroyed, lost or stolen Securities which have been replaced or paid or Securities for whose payment U.S. Legal Tender has theretofore been deposited with the Trustee or the Paying Agent in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer, as provided in Section 8.5) have been delivered to the Trustee for cancellation and the Issuer has paid all sums payable by them hereunder, or if:

(i) either (x) all Securities have become due and payable hereunder or (y) will become due and payable within one year, or are to be called for redemption within one year, under arrangements reasonably satisfactory to the Trustee for the giving of notice of such redemption by the Trustee in the name, and at the expense, of the Issuer, in accordance with the provisions hereof;

(ii) the Issuer shall have irrevocably deposited or caused to be deposited with the Trustee or a trustee satisfactory to the Trustee, under the terms of an irrevocable trust agreement in form and substance satisfactory to the Trustee, as trust funds in trust solely for the benefit of the Holders of that purpose, U.S. Legal Tender in such amount as is sufficient without consideration of reinvestment of such interest, to pay principal of, premium, if any, and interest on the outstanding Securities to maturity or redemption; provided that the Trustee shall have been irrevocably instructed to apply such U.S. Legal Tender to the payment of said principal, premium, if any, and interest with respect to the Securities;

(iii) no Default or Event of Default with respect to this Indenture or the Securities shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit (other than a Default or Event of Default resulting from the incurrence of Indebtedness all or a portion of the proceeds of which will be used to defease the Securities pursuant to this Article Eight concurrently with such incurrence) and such deposit will not result in a breach or violation of, or constitute a default

under, any other instrument or agreement to which the Issuer is a party or by which the Issuer is bound;

(iv) the Issuer shall have paid all other sums payable by it hereunder; and

(v) the Issuer shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent providing for or relating to the termination of the Issuer's obligations under the Securities and this Indenture have been complied with.

Subject to the next sentence and notwithstanding the foregoing paragraph, the Issuer's obligations in Sections 2.5, 2.6, 2.7, 2.8, 4.1, 4.2, 7.7, 8.5 and 8.6 shall survive until the Securities are no longer outstanding pursuant to the last paragraph of Section 2.8. After the Securities are no longer outstanding, the Issuer's obligations in Sections 7.7, 8.5 and 8.6 shall survive.

After such delivery or irrevocable deposit, the Trustee upon request shall acknowledge in writing the discharge of the Issuer's obligations under the Securities and this Indenture except for those surviving obligations specified above.

8.2. Legal Defeasance and Covenant Defeasance .

(a) The Issuer may, at its option by Board Resolutions of the Boards of Directors of the Issuer, at any time, elect to have either paragraph (b) or (c) below applied to all outstanding Securities upon compliance with the conditions set forth in Section 8.3.

(b) Upon the Issuer's exercise under paragraph (a) hereof of the option applicable to this paragraph (b), the Issuer and any Guarantor shall, subject to the satisfaction of the conditions set forth in Section 8.3, be deemed to have been discharged from their respective obligations with respect to all outstanding Securities and the corresponding Guarantees on the date the conditions set forth below are satisfied (hereinafter, " Legal Defeasance"). For this purpose, Legal Defeasance means that the Issuer shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Securities, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.4 and the other Sections of this Indenture referred to in (i) and (ii) below, and to have satisfied all its other obligations under such Securities and this Indenture (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions, which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of outstanding Securities to receive solely from the trust fund described in Section 8.4, and as more fully set forth in such Section, payments in respect of the principal of, premium, if any, and interest on such Securities when such payments are due, (ii) the Company's obligations with respect to such Securities under Article Two and Section 4.2, (iii) the rights, powers, trust, duties and immunities of the Trustee hereunder and the

Company's obligations in connection therewith and (iv) this Article Eight. Subject to compliance with this Article Eight, the Issuer may exercise its option under this paragraph (b) notwithstanding the prior exercise of its option under paragraph (c) hereof.

(c) Upon the Issuer's exercise under paragraph (a) hereof of the option applicable to this paragraph (c), the Issuer and each Guarantor shall, subject to the satisfaction of the conditions set forth in Section 8.3, be released from their obligations, if any, under the covenants contained in Sections 4.3 and 4.4 and Sections 4.12 through 4.20 and Article Five with respect to the outstanding Securities and the corresponding Guarantees on and after the date the conditions set forth below are satisfied (hereinafter, "Covenant Defeasance"), and the Securities shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Securities shall not be deemed outstanding for accounting purposes). For this purpose, such Covenant Defeasance means that, with respect to the outstanding Securities, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.1(iii), but, except as specified above, the remainder of this Indenture and such Securities shall be unaffected thereby. In addition, upon the Issuer's exercise under paragraph (a) hereof of the option applicable to this paragraph (c), subject to the satisfaction of the conditions set forth in Section 8.3 hereof, Sections 6.1(iii), 6.1(iv) and 6.1(v) shall not constitute Events of Default.

8.3. Conditions to Legal Defeasance or Covenant Defeasance .

The following shall be the conditions to the application of either Section 8.2(b) or 8.2(c) to the outstanding Securities:

In order to exercise either Legal Defeasance or Covenant Defeasance:

(i) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, U.S. Legal Tender or non-callable U.S. Government Obligations which through the scheduled payment of principal, premium, if any, and interest in respect thereof in accordance with their terms, will provide, not later than one day before the due date of any payment on the Securities, U.S. Legal Tender, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest on the Securities on the stated date for payment thereof or on the applicable redemption date, as the case may be;

(ii) in the case of an election under Section 8.2(b), the Issuer shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that (a) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling or (b) since the date of the execution of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(iii) in the case of an election under Section 8.2(c), the Issuer shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that the Holders of the Securities will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(iv) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the incurrence of Indebtedness all or a portion of the proceeds of which will be used to defease the Securities pursuant to this Article Eight concurrently with such incurrence) or insofar as Sections 6.1(vi) and 6.1(vii) hereof are concerned, at any time in the period ending on the 91st day after the date of such deposit;

(v) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under this Indenture (other than a Default or Event of Default resulting from the incurrence of Indebtedness all or a portion of the proceeds of which will be used to defease the Securities pursuant to this Article Eight concurrently with such incurrence), the Credit Agreement or any other material agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(vi) the Issuer shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Issuer with the intent of preferring the Holders over any other creditors of the Issuer or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Issuer or others;

(vii) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent hereunder provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with; and

(viii) the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that, assuming no intervening bankruptcy or insolvency of the Company between the date of deposit and the 91st day following the deposit and that no Holder is an insider of the Company, after the 91st day following the deposit, the trust funds will not be subject to the effect of Section 547 of the United States Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law.

Notwithstanding the foregoing, the Opinion of Counsel required by clause (ii) above of this Section 8.3 need not be delivered if all Securities not theretofore delivered to the Trustee for cancellation (i) have become due and payable, (ii) will become due and payable on the Maturity Date within one year or (iii) are to be called for redemption within one year under arrangements reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

8.4. Application of Trust Money.

The Trustee or Paying Agent shall hold in trust U.S. Legal Tender or U.S. Government Obligations deposited with it pursuant to this Article Eight, and shall apply the deposited U.S. Legal Tender and the money from U.S. Government Obligations in accordance with this Indenture to the payment of principal of, premium, if any, and interest on the Securities.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Legal Tender or U.S. Government Obligations deposited pursuant to Section 8.3 hereof or the principal, premium, if any, and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Securities.

Anything in this Article Eight to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time upon the Issuer's request any U.S. Legal Tender or U.S. Government Obligations held by it as provided in Section 8.3 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

8.5. Repayment to the Issuer.

The Trustee and the Paying Agent shall pay to the Issuer upon request any money held by them for the payment of principal, premium, if any, or interest that remains unclaimed for two years; provided that the Trustee or such Paying Agent, before being required to make any payment, may at the expense of the Issuer cause to be published once in a newspaper of general circulation in The City of New York or mail to each Holder entitled to such money notice that such money remains unclaimed and that after a date specified therein which shall be at least 30 days from the date of such publication or mailing any unclaimed balance of such

money then remaining will be repaid to the Issuer. After payment to the Issuer, Holders entitled to such money must look to the Issuer for payment as general creditors unless an applicable law designates another Person.

8.6. Reinstatement.

If the Trustee or Paying Agent is unable to apply any U.S. Legal Tender or U.S. Government Obligations in accordance with this Article Eight by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article Eight until such time as the Trustee or Paying Agent is permitted to apply all such U.S. Legal Tender or U.S. Government Obligations in accordance with this Article Eight; provided that if the Issuer has made any payment of interest on, premium, if any, or principal of any Securities because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Securities to receive such payment from the U.S. Legal Tender or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE IX

AMENDMENTS, SUPPLEMENTS AND WAIVERS

9.1. Without Consent of Holders.

The Issuer, any Guarantor and the Trustee, together, may amend or supplement this Indenture, the Securities, any Guarantee or the Security Documents without notice to or consent of any Securityholder:

(i) to cure any ambiguity, defect or inconsistency, so long as such change does not, in the good faith determination of the Board of Directors of the Company, adversely affect the rights of any of the Holders in any material respect. In formulating its determination on such matters, the Board of Directors of the Company will be entitled to rely on such evidence as it deems appropriate;

(ii) to evidence the succession in accordance with Article Five of another Person to the Company or a Guarantor and the assumption by any such successor of the covenants of the Company or such Guarantor herein and in the Securities;

(iii) to provide for uncertificated Securities in addition to or in place of certificated Securities;

(iv) to make any other change that would provide additional benefit or rights to the Securityholders or that does not adversely affect the rights of any Securityholders hereunder in any material respect;

(v) to comply with any requirements of the Commission in connection with the qualification of this Indenture under the TIA;

(vi) to add or release any Guarantor pursuant to the terms of this Indenture;

(vii) to provide for issuance of the Exchange Notes, which will have terms substantially identical in all material respects to the Initial Notes (except that the transfer restrictions contained in the Initial Notes will be modified or eliminated, as appropriate), and which will be treated together with any outstanding Initial Notes, as a single issue of securities, provided that for purposes of this clause (vii), the terms Initial Notes and Exchange Notes, shall include any other Securities issued in accordance with clause (iii) of the fourth paragraph of Section 2.2 or Securities issued in exchange therefor which are identical in all material respects to such Securities (except that the transfer restrictions on the Securities issued in exchange for Securities issued in accordance with clause (iii) of the fourth paragraph of Section 2.2 shall be modified or eliminated, as appropriate); or

(viii) to release, modify or supplement the Notes Secured Creditors' Lien or execute other intercreditor, subordination or further assurances agreements with respect to Collateral in accordance with the terms and conditions set forth in this Indenture and under the Security Documents;

provided that the Company has delivered to the Trustee an Opinion of Counsel and an Officers' Certificate, each stating that such amendment or supplement complies with the provisions of this Section 9.1.

9.2. With Consent of Holders.

Subject to Section 6.7, the Issuer, the Guarantors and the Trustee, together with the written consent of the Holder or Holders of at least a majority in aggregate principal amount of the outstanding Securities, may amend or supplement this Indenture, the Securities or the Guarantees without notice to any other Securityholders. Subject to Section 6.7, the Holder or Holders of a majority in aggregate principal amount of the outstanding Securities may waive compliance by the Issuer or any Guarantor with any provision of this Indenture, the Securities or any Guarantee without notice to any other Securityholder. In addition, without the consent of the Holders of at least 75% in aggregate principal amount of the Securities then outstanding, (a) no amendment may release from the Lien of this Indenture or the Securities and the Security Documents all or substantially all of the Collateral otherwise than in accordance with the terms of such Security Documents and (b) no waiver or amendment to this Indenture

or the Security Documents may alter the priority of the Lien securing the Collateral in any manner that adversely affects the rights of any Holder.

Without the consent of each Securityholder affected, however, no amendment, supplement or waiver, including a waiver pursuant to (and to the extent provided in) Section 6.4, may:

(i) reduce the amount of Securities whose Holders must consent to an amendment, supplement or waiver;

(ii) reduce the rate of or change or have the effect of changing the time for payment of interest, including default interest, on any Security;

(iii) reduce the principal of or change or have the effect of changing the fixed maturity of any Security, or change the date on which any Securities may be subject to redemption or reduce the redemption price therefor;

(iv) make any Securities payable in money other than that stated in the Securities;

(v) make any change in provisions of this Indenture protecting the right of each Holder to receive payment of principal of, premium, if any, and interest on such Security on or after the due date thereof or to bring suit to enforce such payment, or permitting Holders of a majority in principal amount of the Securities to waive Defaults or Events of Default;

(vi) modify or change any provision of this Indenture or the related definitions affecting the ranking of the Securities or any Guarantee, in a manner which adversely affects the Holders;

(vii) amend, change or modify in any material respect the obligation of the Issuer to make and consummate a Change of Control Offer in the event of a Change of Control which has occurred or modify any of the provisions or definitions with respect thereto after a Change of Control has occurred;

(viii) make any changes in Section 6.4, 6.7 or this Section 9.2; or

(ix) release any Guarantor that is a Significant Subsidiary from any of its obligations under its Guarantee or this Indenture other than in accordance with the terms of this Indenture.

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.2 becomes effective, the Issuer shall mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuer to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

9.3. Compliance with TIA.

From the date on which this Indenture is qualified under the TIA, every amendment, waiver or supplement of this Indenture or the Securities or any Guarantee shall comply with the TIA as then in effect.

9.4. Revocation and Effect of Consents.

Until an amendment, waiver or supplement becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to his Security or portion of his Security by notice to the Trustee or the Issuer received before the date on which the Trustee receives an Officers' Certificate certifying that the Holders of the requisite principal amount of Securities have consented (and not theretofore revoked such consent) to the amendment, supplement or waiver.

The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver. If a record date is fixed, then notwithstanding the last sentence of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date.

After an amendment, supplement or waiver becomes effective, it shall bind every Securityholder, unless it makes a change described in any of clauses (i) through (vii) of Section 9.2, in which case, the amendment, supplement or waiver shall bind only each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security; provided that any such waiver shall not impair or affect the right of any Holder to receive payment of principal of, premium, if any, and interest on a Security, on or after the respective due dates expressed

in such Security, or to bring suit for the enforcement of any such payment on or after such respective dates without the consent of such Holder.

9.5. Notation on or Exchange of Securities.

If an amendment, supplement or waiver changes the terms of a Security, the Issuer may require the Holder of the Security to deliver it to the Trustee. The Issuer shall provide the Trustee with an appropriate notation on the Security about the changed terms and cause the Trustee to return it to the Holder at the Issuer's expense. Alternatively, if the Issuer or the Trustee so determines, the Issuer in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or issue a new Security shall not affect the validity and effect of such amendment, supplement or waiver.

9.6. Trustee to Sign Amendments, etc.

The Trustee shall execute any amendment, supplement or waiver authorized pursuant to this Article Nine; provided that the Trustee may, but shall not be obligated to, execute any such amendment, supplement or waiver which affects the Trustee's own rights, duties or immunities under this Indenture. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel and an Officers' Certificate each complying with Sections 11.4 and 11.5 and stating that the execution of any amendment, supplement or waiver authorized pursuant to this Article Nine is authorized or permitted by this Indenture and constitutes the legal, valid and binding obligations of the Issuer enforceable in accordance with its terms. Such Opinion of Counsel shall be at the expense of the Issuer.

ARTICLE X

COLLATERAL AND SECURITY DOCUMENTS

10.1. Security Documents; Additional Collateral.

(a) In order to secure the due and punctual payment of the Securities and all other Obligations in respect of the Securities and this Indenture, and the other amounts payable to the Trustee hereunder, the Company and the Guarantors shall, on the Issue Date, enter into the applicable Security Documents to create the Lien on the Collateral in favor of the Collateral Agent for the benefit of the Notes Secured Creditors and to provide for certain related intercreditor matters. Any Guarantor shall, upon becoming a Guarantor, become a party to each applicable Security Document as shall be necessary or appropriate to grant and create a valid Lien on and security interest in the personal property of such Guarantor of the type described in the definition of "Collateral" in the Security Agreement and, to the extent required by the Credit Agreement, all real property owned by such Guarantor, in each case, subject to no Liens other than Liens permitted by this Indenture and the Security Documents. In furtherance

and in compliance with the provisions of Section 4.19 herein, after the Issue Date, to further secure the Obligations in respect of the Securities and this Indenture, the Company and the Guarantors shall enter into the applicable Security Documents to create a Lien in favor of Collateral Agent for the benefit of the Notes Secured Creditors on any and all Collateral on which a Lien is granted to the Collateral Agent for the benefit of the Bank Lenders.

(b) If at any time after the First-Lien Obligations Termination Date, the Company or any Guarantor acquires (i) in fee simple any real property with a fair market value in excess of $1.0 million or (ii) any leasehold interest in any leasehold property with a fair market value in excess of $1.0 million, in either case as determined in good faith by the Company's Board of Directors as evidenced by a Board Resolution, the Company or such Guarantor shall grant to the Collateral Agent for the benefit of the Notes Secured Creditors a Mortgage on such real property; provided, that the Company or any such Guarantor shall not be required to so grant a Mortgage on such real property to the extent that (1) such a grant is prohibited by the applicable lease (and the lessor thereunder or its mortgagees has not consented thereto) or (2) such a grant is prohibited by the terms of any document evidencing a prior Lien thereon to the extent permitted hereunder. All such Mortgages shall be reasonably satisfactory in form and substance to the Collateral Agent. In connection therewith, the Company shall deliver to the Collateral Agent a Mortgage, title insurance policy, survey, legal opinion, Uniform Commercial Code (" UCC") fixture filings and other documents and instruments meeting the requirements of Section 6(g), (h), (i), (j), (l), (m), (n), (o), (p) and (q) of the Purchase Agreement, each in form and substance satisfactory to Collateral Agent, and pay all costs and expenses in connection therewith.

(c) The Trustee (solely in its capacity as a trustee on behalf of the Holders pursuant to the Security Documents) and each Holder, by accepting a Security, agrees to all of the terms and provisions of each of the Security Documents, as the same may be amended from time to time pursuant to the provisions of Security Documents and this Indenture, and acknowledge that (i) until such time as the First-Lien Obligations Termination Date has occurred, the Security Documents may be amended, to the extent set forth therein and to the extent permitted by law, without the consent of the Trustee or the Holders and (ii) the Security Documents also may be amended to the extent permitted by law without the consent of the Trustee or the Holders to add additional Persons as Secured Creditors under the Security Documents and/or add new classes of creditors, in each case, to the extent such Indebtedness and Liens are permitted hereby.

(d) The Trustee (solely in its capacity as a trustee on behalf of the Holders pursuant to the Security Documents) and the Holders expressly acknowledge and agree (i) to all of the terms and agreements contained in the Security Agreement, (ii) that the claims of the Holders and the Trustee against the Assignors (as defined in the Security Agreement) in respect of the Collateral constitute junior claims separate and apart (and of a different class) from the senior claims with respect to all First-Lien Obligations against the Assignors in

respect of the Collateral and (iii) the Obligations under the Credit Agreement and all First-Lien Obligations and Senior Second-Lien Notes Obligations (as defined in the Security Agreement) include, without limitation, all interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of any Assignor at the rate provided for in the respective Secured Debt Agreements (as defined in the Security Agreement) governing the same, whether or not a claim for post-petition interest is allowed in any such case, proceeding or other action.

(e) In the event that any provisions of this Indenture are deemed to conflict with Sections 1.1, 7.5 or 10.8 of the Security Agreement, the provisions of such sections of the Security Agreement shall govern, except in the case of any provisions relating to the duties or obligations of the Trustee under this Indenture in which case the provisions of this Indenture shall govern.

10.2. Recording, Etc.

(a) The Company and the Guarantors shall take or cause to be taken all action required or desirable to be taken by the Company or such Guarantor to maintain and perfect the Lien on the Collateral granted by the Security Documents, to the extent required thereby, including, but not limited to, causing all financing statements, any mortgage or deed of trust, the Security Documents (or a short form version thereof), other instruments of further assurance, including, without limitation, continuation statements covering security interests in personal property to be executed and delivered to the Collateral Agent to be promptly recorded, registered and filed, and at all times to be kept recorded and will execute and cause to be filed such financing statements and cause to be issued and filed such continuation statements, all in such manner and in such places as may be required by law fully to maintain the perfection of the Holders' and the Trustee's rights under this Indenture and the Security Documents to all property comprising the Collateral. Without limiting the generality of the foregoing, the Company will cause each new Guarantor that becomes a Guarantor after the Issue Date pursuant to Sections 4.15 and 4.20 hereof to execute and deliver to the Collateral Agent and the Trustee at such time as such Guarantor becomes a Guarantor and owns, possesses or acquires any property or assets of the type or nature that would constitute Collateral (i) a counterpart to the Security Agreement and such other documents as required by the Security Agreement and (ii) any other Security Documents as shall be necessary or reasonably requested by the Collateral Agent in order to grant and perfect the Lien on the Collateral of such Guarantor. Notwithstanding the foregoing and subject to Section 10.3 hereof, to the extent the Bank Lenders do not require the Company or the Guarantors to maintain or perfect a Lien in certain Collateral, the Holders shall not require the Company or the Guarantors to maintain or perfect a Lien on such Collateral.

The Company shall from time to time promptly pay and discharge all mortgage and financing and continuation statement recording and/or filing fees, charges and taxes relating

to this Indenture and the Security Documents, any amendments thereto and any other instruments of further assurance. Notwithstanding the foregoing, the Trustee shall not have any duty or obligation to ascertain whether any such fees, charges and taxes are required to be paid at any time. This paragraph (a) is subject to the provisions of the Security Agreement.

(b) The Company shall furnish or cause to be furnished to the Trustee:

(1) at the time of execution and delivery of this Indenture, Opinions of Counsel delivered on the Issue Date with respect to Collateral substantially to the effect that, in the opinion of such counsel, each Security Document and all other instruments of further assurance or assignment have been properly recorded, or filed to the extent necessary to perfect or create the security interests created by each such Security Document, to the extent that perfection of such security interests is required by the Security Documents, and reciting the details of such action, and stating that as to the security interests created pursuant to each such Security Document, such recordings, registrations and filings are the only recordings, registrations and filings necessary to give notice thereof (other than as stated in such opinion);

(2) within 30 days after May 20 of each year beginning with May 20, 2005, an Opinion of Counsel dated as of such date either (i) to the effect that, in the opinion of such counsel, such action has been taken with respect to the recordings, registrations, filings, re-recordings, re-registrations and refilings of all instruments of further assurance as is necessary to maintain the validity, enforceability and perfection of the security interests of each of the Security Documents, to the extent that perfection of such security interests is required by the Security Documents, and reciting with respect to such security interests the details of such action (or to the extent that further action is required to be taken within the next twelve months, details of such further action) or referencing prior Opinions of Counsel in which such details are given, or (ii) if perfection of such security interests is required by the Security Documents, to the effect that, in the opinion of such counsel, no additional action is necessary to maintain perfection of such security interests.

10.3. Release of Collateral/Intercreditor and Subordination Agreements .

The Company, the Guarantors and the Trustee agree that, and each Holder, by accepting a Security, acknowledges that, subject to the terms of the Security Documents:

(a) For so long as there are any First-Lien Obligations or commitments or letters of credit under the Credit Agreement outstanding, the Bank Lenders shall have the exclusive right and authority, whether before or after the occurrence of an event of default under a Credit Agreement or an Event of Default under this Indenture, to determine the release, sale or other disposition of the Collateral and any consent by the Bank Lenders to the release of their Lien upon any of the Collateral shall be binding

upon the Holders of Securities and shall be deemed to be a release of the Notes Secured Creditors' Lien; provided that no release of the Notes Secured Creditors' Lien on the Collateral shall be made if (i) the Collateral to be released is not the subject of a sale or other disposition and such release is being made in connection with or in contemplation of the repayment in full of the First-Lien Obligations or (ii) all or substantially all of the properties and assets constituting the Collateral are to be released, in each case, other than in accordance with the terms of this Indenture and the Security Documents.

(b) At such time as the First-Lien Obligations Termination Date shall have occurred, except as set forth in paragraphs (c) and (d) below and subject to Article Nine, the Trustee will have the exclusive right and authority to determine the release, sale or other disposition of the Collateral in accordance with instructions from Holders of a majority in aggregate principal amount of Securities.

(c) At such time as the First-Lien Obligations Termination Date shall have occurred, the Company and the Guarantors shall have the right to obtain a release of items of Collateral (the "Released Interest") in connection with an Asset Sale upon compliance with the condition that the Company deliver to the Trustee the following:

(1) an Officers' Certificate stating that:

(i) such Asset Sale complies with the terms and conditions of Section 4.18 hereof and

(ii) all Net Proceeds from the sale of the Released Interest will be applied pursuant to the provisions of Section 4.18 hereof.

(2) an Opinion of Counsel stating the Trustee has a first priority security interest in and Lien on all Collateral (other than cash or Cash Equivalents) comprising a portion of the consideration received in such Asset Sale, if any, to the extent such security interest and Lien are required by this Indenture or the Security Documents; and

(3) an Officers' Certificate and an Opinion of Counsel stating that the conditions precedent with respect to the release of such Released Interest have been complied with, prior to the release of the Collateral.

Upon request by the Company and compliance by the Company with the conditions set forth in this paragraph (c), the Trustee will instruct the Collateral Agent to release the Released Interest identified by the Company from the Lien in favor of the Collateral Agent for the benefit of the Notes Secured Creditors.

(d) If at any time pursuant to the provisions of this Indenture (including in connection with an Asset Sale comprising the sale of Capital Stock of a Guarantor), a Guarantor is released from its guarantee obligations with respect to the Securities, such Guarantor shall have the right to request a release from the Notes Secured Creditors' Lien on any Collateral pledged by such Guarantor upon compliance by the Company with the conditions set forth in Section 10.3(c) above.

(e) At such time as the First-Lien Obligations Termination Date shall have occurred, subject to the provisions of this Indenture and the Security Documents, the Company or any Guarantor may, without any release or consent by the Trustee or the Collateral Agent, if no Event of Default shall have occurred and be continuing:

(1) abandon, terminate, cancel, release or make alterations in or substitutions of any leases, contracts or rights-of-way subject to the Lien of the Security Documents; provided that (i) any altered or substituted leases, contracts or rights-of-way shall forthwith, without further action, be subject to the Lien created by the Security Documents to the same extent as those previously existing and (ii) if the Company or such Guarantor, as the case may be, shall receive any money or property in excess of its expenses in connection with such termination, cancellation, release, alteration or substitution as consideration or compensation for such termination, cancellation, release, alteration or substitution, such money or property shall be treated as monies received in connection with an Asset Sale and subject to the provisions of Section 4.18 hereof;

(2) surrender or modify any franchise, license or permit subject to the Lien created by the Security Documents which it may own or under which it may be operating; provided that, after the surrender or modification of any such franchise, license or permit, the Company or such Guarantor, as the case may be, shall still, in its business judgment, be entitled, under some other or without any franchise, license or permit, to conduct its business in the territory in which it is then operating; and provided, further, that if the Company or such Guarantor, as the case may be, shall be entitled to receive any money or property in excess of its expenses in connection with such surrender or modification as consideration or compensation for such surrender or modification, such money or property shall be treated as monies received in connection with an Asset Sale and subject to the provisions of Section 4.18 hereof;

(3) alter, repair, replace, change the location or position of and add to its plants, structures, machinery, systems, equipment, fixtures and appurtenances;

(4) demolish, dismantle, tear down, scrap or abandon any Collateral if, in the Company's or such Guarantor's business judgment, such demolition, dismantling, tearing down, scrapping or abandonment is in the best interest of the Company or such Guarantor;

(5) grant a license of any Patent, Mark or Copyright (each as defined in the Security Agreement); provided that the Company or such Guarantor receives consideration at least equal to the fair market value of such license;

(6) abandon any Patent, Mark or Copyright where subsequent applications relating to such Patent, Mark or Copyright have been filed with respect to similar subject matter or where the Company or such Guarantor, as the case may be, in its business judgment, concludes that such Patent, Mark or Copyright is no longer useful in the conduct of its business;

(7) grant rights-of-way and easements over or in respect of any real property; provided that such grant will not in any material respect, in the business judgment of the Company or the Guarantor, as the case may be, impair the usefulness of such property in the conduct of its business and will not be prejudicial to the interests of the Holders;

(8) grant leases or subleases in respect of any owned real property in the event that the Company or such Guarantor, as the case may be, determines, in its business judgment, that such owned real property is no longer useful in the conduct of its business and that such lease or sublease would not be reasonably likely to have a material adverse effect on the value of the property subject thereto; provided that any such lease or sublease shall by its terms be subject and subordinate to the Lien, and otherwise comply with the provisions, of the mortgage affecting such real property; and

(9) sell, exchange or otherwise dispose of any asset constituting Collateral; provided that such sale, exchange or other disposition that constitutes an Asset Sale shall comply with the provisions of this Indenture; provided, further, that if the Collateral being sold, exchanged or otherwise disposed of is real property and constitutes a portion (but not all) of the real property covered by a single mortgage, then the Company shall, if requested by the Collateral Agent or the Trustee, deliver to the Trustee a title endorsement and an updated survey, in each case covering the portion of such real property that is not so sold, exchanged or otherwise disposed of.

Upon any such sale, exchange or other disposition permitted by this Section 10.03(e) (other than sales, exchanges or dispositions to the Company or a Guarantor) such Collateral shall be sold, exchanged or otherwise disposed of free and clear of

Liens created by the Security Documents. In the event that the Company or a Guarantor has sold, exchanged or otherwise disposed of or proposes to sell, exchange or otherwise dispose of any portion of the Collateral (other than sales, exchanges or dispositions to the Company or a Guarantor) which under the provisions of this Section 10.03(e) may be sold, exchanged or otherwise disposed of by the Company or such Guarantor without any release or consent of the Trustee or the Collateral Agent, and the Company or such Guarantor requests the Trustee to furnish a written disclaimer, release or quitclaim of any interest in such property under any of the Security Documents, the Trustee or Collateral Agent shall promptly execute such an instrument (in recordable form, where appropriate) upon delivery to the Trustee of (i) an Officers' Certificate by the Company or such Guarantor reciting the sale, exchange or other disposition made or proposed to be made and describing in reasonable detail the property affected thereby, and stating that such property is property which may be sold, exchanged or otherwise disposed of or dealt with by the Company or such Guarantor without any release or consent of the Trustee or the Collateral Agent in accordance with the provisions of this Section 10.03(e), and (ii) an Opinion of Counsel stating that the sale, exchange or other disposition made or proposed to be made was duly taken by the Company or such Guarantor in conformity with this Section 10.03(e) and that the execution of such written disclaimer, release or quitclaim is appropriate under this Section 10.03(e).

(f) The Company shall not agree to any Refinancing of Indebtedness under the Credit Agreement (if any replacement Credit Agreement is to be in existence) unless, on or prior thereto, the lenders and/or a collateral agent on behalf of such lenders under the Credit Agreement (after giving effect to such Refinancing) execute appropriate replacement Security Documents to provide for a junior-priority lien in favor of the Holders consistent with the priorities of various creditors described in this Indenture and the Security Documents; provided that the Company needs not comply with this requirement to the extent that any new Indebtedness incurred in connection with such Refinancing is not secured by any of the Collateral.

(g) To facilitate the extension of Indebtedness permitted to be incurred and secured by a Lien on the Collateral hereunder or the Refinancing of any Indebtedness permitted to be incurred and secured by a Lien on the Collateral pursuant to this Indenture (" Permitted Secured Debt"), the Trustee, on behalf of, but without the necessity of obtaining the consent of the Holders of Securities, shall enter into intercreditor or acknowledgement agreements as reasonably requested by the Company, and/or take such other actions that may be reasonably requested by the Company, in connection with securing Permitted Secured Debt by the Collateral. Such intercreditor or acknowledgement agreements shall provide for substantially the same intercreditor and other relevant provisions set forth in the Security Agreement, including, without limitation, providing (i) that the Permitted Secured Debt may be secured by the Collateral

and be entitled to the benefits of the Security Documents, (ii) the relative priority of the Lien in the Collateral securing such Permitted Secured Debt, (iii) that the holder of such Permitted Secured Debt shall be entitled to the same rights and remedies, including rights of foreclosure and voting rights, as the holders of Indebtedness in the same class or ranking as the holders of other Permitted Secured Debt, (iv) the appointment of a Successor Collateral Agent and (v) such other matters as are reasonably requested by the Company and/or the holders of such Permitted Secured Debt as may be necessary to enable the Company to receive the practical benefit of the agreements set forth herein regarding the ability of the Company to incur other Permitted Secured Debt so long as such provisions (A) do not contain additional provisions that materially and adversely affect the rights, benefits and obligations of the Senior Second Lien Notes Creditors and (B) do not give rise to an express violation of the terms of the Credit Agreement, the Senior Second Lien Notes Documents (as defined in the Security Agreement) and the Security Documents.

10.4. Taking and Destruction.

At such time as the First-Lien Obligations Termination Date shall have occurred, upon any Taking or Destruction of any Collateral, all Net Insurance Proceeds received by the Company or any Guarantor shall be deemed Net Proceeds and shall be applied in accordance with Section 4.18.

10.5. Trust Indenture Act Requirements.

The release of any Collateral from the Lien of any of the Security Documents or the release of, in whole or in part, the Liens created by any of the Security Documents will not be deemed to impair the security interests in contravention of the provisions hereof if and to the extent the Collateral or Liens are released pursuant to the applicable Security Documents and pursuant to the terms hereof. The Trustee and each of the Holders acknowledge that a release of Collateral or Liens strictly in accordance with the terms of the Security Documents and the terms hereof will not be deemed for any purpose to be an impairment of the Security Interests in contravention of the terms of this Indenture. To the extent applicable following the qualification of this Indenture under the TIA, without limitation, the Company and the Guarantors will comply with TIA Section 314(d) relating to the release of property or securities from the Liens hereof and of the Security Documents. At the request of the Trustee, the Company shall provide a certificate or opinion required by TIA Section 314(d), which certificate or opinion may be made by an Officer of the Company, except in cases in which TIA Section 314(d) requires that such certificate or opinion be made by an independent Person.

10.6. Suits To Protect the Collateral.

Subject to the provisions of the Security Documents, the Trustee shall have power to instruct the Collateral Agent to institute and to maintain such suits and proceedings as it may

deem expedient to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of any of the Security Documents or this Indenture (including power to instruct the Collateral Agent to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Security Interests).

10.7. Purchaser Protected.

In no event shall any purchaser in good faith of any property purported to be released hereunder or under any of the Security Documents be bound to ascertain the authority of the Trustee or the Collateral Agent, as the case may be, to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor shall any purchaser or other transferee of any property or rights permitted by this Article Ten to be sold be under obligation to ascertain or inquire into the authority of the Company, to make any such sale or other transfer.

10.8. Powers Exercisable by Receiver or Trustee.

In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article Ten upon the Company with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Company or of any officer or officers thereof required by the provisions of this Article Ten.

10.9. Determinations Relating to Collateral.

In the event (i) the Trustee shall receive any written request from the Company or any Guarantor under any Security Document for consent or approval with respect to any matter or thing relating to any Collateral or the Company's or any Guarantor's obligations with respect thereto (other than actions with respect to the Collateral on the part of the Trustee that do not, pursuant to the express terms of this Indenture, require the consent of the Holders); or (ii) there shall be required from the Trustee under the provisions of any Security Document any performance or the delivery of any instrument (other than the performance or delivery of any instrument with respect to the Collateral that does not require the consent of the Holders pursuant to the express terms of this Indenture); or (iii) a Responsible Officer of the Trustee shall receive notice or have actual knowledge of any default by the Company or any Guarantor of any covenant or any breach of any representation or warranty of the Company or any Guarantor set forth in any Security Document, and, in the case of clause (i), (ii) or (iii) above, the Trustee's response or action is not otherwise specifically addressed hereunder or under the applicable Security Document then, in each such event, the Trustee shall, within seven

Business Days thereafter, advise the Holders, in writing and at the Company's expense, of the matter or thing as to which consent has been requested or the performance or instrument required to be delivered or the default of which the Trustee has received notice or has actual knowledge. Subject to Article Nine, the Holders of not less than a majority in aggregate principal amount at maturity of the outstanding Securities shall have the exclusive authority to direct the Trustee's response to any of the circumstances contemplated in clauses (i), (ii) and (iii) above. In the event the Trustee shall be required to respond to any of the circumstances contemplated in this Section 10.09, the Trustee shall not be required so to respond unless it shall have received written direction by Holders of not less than a majority in aggregate principal amount at maturity of the outstanding Notes and indemnity reasonably satisfactory to it; provided that the Trustee shall be entitled to hire experts, consultants, agents and attorneys to advise the Trustee on the manner in which the Trustee should respond to such request or render any requested performance or response to such default (the expenses of which shall be reimbursed to the Trustee pursuant to Section 7.07). The Trustee shall be fully protected in the taking of any action recommended or approved by any such expert, consultant, agent or attorney or agreed to by such Holders.

10.10. Release upon Termination of the Company's Obligations.

In the event that the Company delivers an Officers' Certificate certifying that its obligations under this Indenture have been satisfied and discharged by complying with the provisions of Article Eight and such other documents and/or funds as are required to be delivered or paid pursuant to Article Eight, the Trustee shall at the request of the Company instruct the Collateral Agent to execute and deliver, in each case without recourse, representation or warranty, such releases, termination statements and other instruments (in recordable form, where appropriate) as the Company may reasonably request evidencing the termination of the Liens created by the Security Documents in favor of the Collateral Agent for the benefit of the Trustee and the Holders and thereafter neither the Trustee nor the Collateral Agent shall be deemed to hold the Liens for the benefit of the Trustee and the Holders.

10.11. Limitation on Duty of Trustee in Respect of Collateral .

(a) Beyond the exercise of reasonable care by the Trustee, the Trustee shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Trustee shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of the security interest in the Collateral.

(b) The Trustee shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens upon any of the Collateral, whether impaired by operation of law or by reason of any action or

omission to act on its part hereunder, except to the extent such action or omission constitutes negligence or willful misconduct on the part of the Trustee, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of the Company to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral.

10.12. Successor Collateral Agent.

If in connection with a Refinancing of a Credit Agreement or otherwise, the Collateral Agent resigns or is otherwise removed or replaced, the Company may appoint a successor collateral agent (a "Successor Collateral Agent") on behalf of all Persons then holding First-Lien Obligations and on behalf of the Trustee and Holders of Securities. The Successor Collateral Agent shall be a bank, trust company or other financial institution having capital and retained earnings of at least $1,000,000,000. Upon acceptance of any appointment as the Successor Collateral Agent, such Successor Collateral Agent shall thereupon succeed to and become vested with all of the rights, powers, privileges, duties and obligations of the retiring Collateral Agent hereunder and under the Security Documents and the retiring Collateral Agent shall be discharged from its duties and obligations hereunder. In this connection, the Trustee shall, if requested by the Successor Collateral Agent and without the necessity of obtaining the consent of the Holders of Securities, so acknowledge such fact in writing in form and substance reasonably satisfactory to the Successor Collateral Agent.

ARTICLE XI

GUARANTEE OF SECURITIES

11.1. Unconditional Guarantee.

Subject to the provisions of this Article Eleven, each of the Guarantors, upon the execution and delivery of a Guarantee pursuant to Section 4.15 or 4.20, shall hereby, jointly and severally, unconditionally and irrevocably guarantee, on a senior secured basis (such guarantees to be referred to herein as the "Guarantees") to each Holder of a Security authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Securities or the obligations of the Issuer or any other Guarantors to the Holders or the Trustee hereunder or thereunder, that: (a) the principal of, premium, if any, and interest on the Securities shall be duly and punctually paid in full when due, whether at maturity, upon redemption at the option of Holders pursuant to the provisions of the Securities relating thereto, by acceleration or otherwise, and interest on the overdue principal and (to the extent permitted by law) interest, if any, on the Securities and all other obligations of the Issuer or the Guarantors to the Holders or the Trustee hereunder or thereunder (including amounts due the Trustee under Section 7.7 hereof) and all other obligations shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any

Securities or any of such other obligations, the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed, or failing performance of any other obligation of the Issuer to the Holders under this Indenture or under the Securities, for whatever reason, each Guarantor shall be obligated to pay, or to perform or cause the performance of, the same immediately. An Event of Default under this Indenture or the Securities shall constitute an event of default under the Guarantees, and shall entitle the Holders of Securities to accelerate the obligations of the Guarantors hereunder in the same manner and to the same extent as the obligations of the Issuer.

Each of the Guarantors, upon the execution and delivery of a Guarantee pursuant to Section 4.15 or 4.20, shall hereby agree that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Securities or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Securities with respect to any provisions hereof or thereof, any release of any other Guarantor, the recovery of any judgment against the Issuer, any action to enforce the same, whether or not a Guarantee is affixed to any particular Security, or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each of the Guarantors, upon the execution and delivery of a Guarantee pursuant to Section 4.15 or 4.20, shall hereby waive the benefit of diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that its Guarantee shall not be discharged except by complete performance of the obligations contained in the Securities, this Indenture and the Guarantees. Each Guarantee is a guarantee of payment and not of collection. If any Holder or the Trustee is required by any court or otherwise to return to the Issuer or to any Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to such Issuer or such Guarantor, any amount paid by such Issuer or such Guarantor to the Trustee or such Holder, each Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Guarantor, upon the execution and delivery of a Guarantee pursuant to Section 4.15 or 4.20, shall hereby further agree that, as between it, on the one hand, and the Holders of Securities and the Trustee, on the other hand, (a) subject to this Article Eleven, the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Six hereof for the purposes of the Guarantees, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (b) in the event of any acceleration of such obligations as provided in Article Six hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of the Guarantees.

No Affiliate, stockholder, officer, director, limited liability company member or employee, past, present or future, of any Guarantor, as such, shall have any personal liability

under such Guarantor's Guarantee by reason of his, her or its status as such Affiliate, stockholder, officer, director, limited liability company member or employee.

11.2. Limitations on Guarantees.

The obligations of any Guarantor under its Guarantee shall be limited to the maximum amount which, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution obligations under this Indenture, will result in the obligations of such Guarantor under the Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law. Each Guarantor that makes a payment or distribution under a Guarantee shall be entitled to a contribution from each other Guarantor in an amount pro rata, based on the net assets of each Guarantor, determined in accordance with GAAP.

11.3. Execution and Delivery of Guarantee.

To further evidence the Guarantees set forth in Section 11.1, each Guarantor, upon the execution and delivery of a Guarantee pursuant to Section 4.15 or 4.20, hereby agrees that a notation of its Guarantee, substantially in the form of Exhibit E hereto, shall be endorsed on each Security authenticated and delivered by the Trustee. The Guarantee of any Guarantor shall be executed on behalf of such Guarantor by either manual or facsimile signature of two Officers of such Guarantor, each of whom, in each case, shall have been duly authorized to so execute by all requisite corporate action. The validity and enforceability of any Guarantee shall not be affected by the fact that it is not affixed to any particular Security.

Each of the Guarantors, upon the execution and delivery of a Guarantee pursuant to Section 4.15 or 4.20, hereby agrees that its Guarantee set forth in Section 11.1 shall remain in full force and effect notwithstanding any failure to endorse on each Security a notation of such Guarantee.

If an Officer of a Guarantor whose signature is on this Indenture or a Guarantee no longer holds that office at the time the Trustee authenticates the Security on which such Guarantee is endorsed or at any time thereafter, such Guarantor's Guarantee of such Security shall nevertheless be valid.

The delivery of any Security by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of any Guarantee set forth in this Indenture on behalf of each Guarantor.

11.4. Release of a Guarantor.

(a) If no Default or Event of Default exists or would exist under this Indenture, upon the sale or disposition of all of the Capital Stock of a Guarantor by the Company or any Restricted Subsidiary of the Company, in a transaction or series of related transactions that either (i) does not constitute an Asset Sale or (ii) constitutes an Asset Sale and such Asset Sale is not in violation of Section 4.18, or upon the consolidation or merger of a Guarantor with or into any Person in compliance with Article Five (in each case, other than to the Company or an Affiliate of the Company), or if any Guarantor is dissolved or liquidated in accordance with this Indenture, such Guarantor's Guarantee will be automatically discharged and such Guarantor shall be released from all obligations under this Article Eleven without any further action required on the part of the Trustee or any Holder. Any Guarantor not so released or the entity surviving such Guarantor, as applicable, shall remain or be liable under its Guarantee as provided in this Article Eleven.

(b) In addition, each such Guarantee will be automatically discharged and the Guarantor party thereto shall be released from all obligations under this Article Eleven without any further action on the part of the Trustee or any Holder upon (i) the release or discharge of the guarantee which resulted in the creation of such Guarantee under such Section 4.15, except a discharge or release by or as a result of payment under such Guarantee or (ii) the designation of such Guarantor as an Unrestricted Subsidiary in accordance with the provisions of this Indenture. Any Guarantor not so released or the entity surviving such Guarantor, as applicable, shall remain or be liable under its Guarantee as provided in this Article Eleven.

(c) The obligations of each Guarantor will be automatically released upon such Guarantor ceasing to be a subsidiary of the Issuer as a result of any foreclosure on any pledge or security interest securing Obligations with respect to the Credit Agreement or other exercise of remedies in respect thereof if such Guarantor is released from its guarantee of Obligations with respect to the Credit Agreement.

(d) The Trustee shall deliver an appropriate instrument evidencing the release of a Guarantor upon receipt of a request by the Issuer or such Guarantor accompanied by an Officers' Certificate and an Opinion of Counsel certifying as to the compliance with this Section 11.4; provided, however, that the legal counsel delivering such Opinion of Counsel may rely as to matters of fact on one or more Officers' Certificates of the Company.

The Trustee shall execute any documents reasonably requested by the Issuer or a Guarantor in order to evidence the release of such Guarantor from its obligations under its Guarantee endorsed on the Securities and under this Article Eleven.

Except as set forth in Articles Four and Five and this Section 11.4, nothing contained in this Indenture or in any of the Securities shall prevent any consolidation or merger of a

Guarantor with or into the Issuer or another Guarantor or shall prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Issuer or another Guarantor.

11.5. Waiver of Subrogation.

Until this Indenture is discharged and all of the Securities are discharged and paid in full, each Guarantor, upon the execution and delivery of a Guarantee pursuant to Section 4.15 or 4.20, shall hereby irrevocably waive and agrees not to exercise any claim or other rights which it may now or hereafter acquire against the Issuer that arise from the existence, payment, performance or enforcement of the Issuer's obligations under the Securities or this Indenture and such Guarantor's obligations under its Guarantee and this Indenture, in any such instance, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, and any right to participate in any claim or remedy of the Holders against the Issuer, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including, without limitation, the right to take or receive from the Issuer, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights. If any amount shall be paid to any Guarantor in violation of the preceding sentence and any amounts owing to the Trustee or the Holders of Securities under the Securities, this Indenture, or any other document or instrument delivered under or in connection with such agreements or instruments, shall not have been paid in full, such amount shall have been deemed to have been paid to such Guarantor for the benefit of, and held in trust for the benefit of, the Trustee or the Holders and shall forthwith be paid to the Trustee for the benefit of itself or such Holders to be credited and applied to the obligations in favor of the Trustee or the Holders, as the case may be, whether matured or unmatured, in accordance with the terms of this Indenture. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the waiver set forth in this Section 11.5 is knowingly made in contemplation of such benefits.

11.6. Immediate Payment.

Each Guarantor, upon the execution and delivery of a Guarantee pursuant to Section 4.15 or 4.20, shall hereby agree to make immediate payment to the Trustee, on behalf of the Holders or itself, of all Obligations due and owing or payable to the respective Holders or the Trustee upon receipt of a demand for payment therefor by the Trustee to such Guarantor in writing.

11.7. No Setoff.

Each payment to be made by a Guarantor hereunder in respect of the Obligations shall be payable in the currency or currencies in which such Obligations are denominated, and shall be made without setoff, counterclaim, reduction or diminution of any kind or nature.

11.8. Obligations Absolute.

The obligations of each Guarantor hereunder are and shall be absolute and unconditional and any monies or amounts expressed to be owing or payable by each Guarantor hereunder which may not be recoverable from such Guarantor on the basis of a Guarantee shall be recoverable from such Guarantor as a primary obligor and principal debtor in respect thereof.

11.9. Obligations Continuing.

The obligations of each Guarantor hereunder shall be continuing and shall remain in full force and effect until all the obligations have been paid and satisfied in full. Upon the execution and delivery of a Guarantee pursuant to Section 4.15 or 4.20, each Guarantor shall hereby agree with the Trustee that it will from time to time deliver to the Trustee suitable acknowledgments of its continued liability hereunder and under any other instrument or instruments in such form as counsel to the Trustee may advise and as will prevent any action brought against it in respect of any default hereunder being barred by any statute of limitations now or hereafter in force and, in the event of the failure of a Guarantor so to do, it hereby irrevocably appoints the Trustee the attorney and agent of such Guarantor to make, execute and deliver such written acknowledgment or acknowledgments or other instruments as may from time to time become necessary or advisable, in the judgment of the Trustee on the advice of counsel, to fully maintain and keep in force the liability of such Guarantor hereunder and under its Guarantee.

11.10. Obligations Not Reduced.

The obligations of each Guarantor hereunder shall not be satisfied, reduced or discharged solely by the payment of such principal, premium, if any, interest, fees and other monies or amounts as may at any time prior to discharge of this Indenture pursuant to Article Eight be or become owing or payable under or by virtue of or otherwise in connection with the Securities or this Indenture.

11.11. Obligations Reinstated.

The obligations of each Guarantor hereunder shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment which would otherwise have reduced the obligations of any Guarantor hereunder (whether such payment shall have been made by or on behalf of the Issuer or by or on behalf of a Guarantor) is rescinded or reclaimed from any of the Holders upon the insolvency, bankruptcy, liquidation or reorganization of the Issuer or any Guarantor or otherwise, all as though such payment had not been made. If demand for, or acceleration of the time for, payment by the Issuer is stayed upon the insolvency, bankruptcy, liquidation or reorganization of such Issuer, all such Indebtedness otherwise subject to demand for payment or acceleration shall nonetheless be payable by each Guarantor as provided herein.

11.12. Obligations Not Affected.

The obligations of each Guarantor hereunder shall not be affected, impaired or diminished in any way by any act, omission, matter or thing whatsoever, occurring before, upon or after any demand for payment hereunder (and whether or not known or consented to by any Guarantor or any of the Holders) which, but for this provision, might constitute a whole or partial defense to a claim against any Guarantor hereunder or might operate to release or otherwise exonerate any Guarantor from any of its obligations hereunder or otherwise affect such obligations, whether occasioned by default of any of the Holders or otherwise, including, without limitation:

(i) any limitation of status or power, disability, incapacity or other circumstance relating to the Issuer or any other Person, including any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, winding-up or other proceeding involving or affecting such Issuer or any other Person;

(ii) any irregularity, defect, unenforceability or invalidity in respect of any indebtedness or other obligation of the Issuer or any other Person under this Indenture, the Securities or any other document or instrument;

(iii) any failure of the Issuer, whether or not without fault on its part, to perform or comply with any of the provisions of this Indenture or the Securities, or to give notice thereof to a Guarantor;

(iv) the taking or enforcing or exercising or the refusal or neglect to take or enforce or exercise any right or remedy from or against the Issuer or any other Person or their respective assets or the release or discharge of any such right or remedy;

(v) the granting of time, renewals, extensions, compromises, concessions, waivers, releases, discharges and other indulgences to the Issuer or any other Person;

(vi) any change in the time, manner or place of payment of, or in any other term of, any of the Securities, or any other amendment, variation, supplement, replacement or waiver of, or any consent to departure from, any of the Securities or this Indenture, including, without limitation, any increase or decrease in the principal amount of or premium, if any, or interest on any of the Securities;

(vii) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Issuer or a Guarantor;

(viii) any merger or amalgamation of the Issuer or a Guarantor with any Person or Persons;

(ix) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction by any present or future action of any governmental authority or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Obligations or the obligations of a Guarantor under its Guarantee; and

(x) any other circumstance, including release of a Guarantor pursuant to Section 11.4 (other than by complete, irrevocable payment) that might otherwise constitute a legal or equitable discharge or defense of the Issuer under this Indenture or the Securities or of another Guarantor in respect of its Guarantee hereunder;

provided, that the provisions of this Section 11.12 are not intended to affect in any way any release of a Guarantor in accordance with the provisions of Section 11.4.

11.13. Waiver.

Without in any way limiting the provisions of Section 11.1 hereof, each Guarantor, upon the execution and delivery of a Guarantee pursuant to Section 4.15 or 4.20, shall hereby waive notice of acceptance hereof, notice of any liability of any Guarantor hereunder, notice or proof of reliance by the Holders upon the obligations of any Guarantor hereunder, and diligence, presentment, demand for payment on the Issuer, protest, notice of dishonor or nonpayment of any of the Obligations, or other notice or formalities to the Issuer or any Guarantor of any kind whatsoever.

11.14. No Obligation to Take Action Against the Issuer.

Neither the Trustee nor any other Person shall have any obligation to enforce or exhaust any rights or remedies or to take any other steps under any security for the Obligations or against the Issuer or any other Person or any property of such Issuer or any other Person before the Trustee is entitled to demand payment and performance by any or all Guarantors of their liabilities and obligations under their Guarantees or under this Indenture.

11.15. Dealing with the Issuer and Others.

The Holders, without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of any Guarantor and without the consent of or notice to any Guarantor, may

(i) grant time, renewals, extensions, compromises, concessions, waivers, releases, discharges and other indulgences to the Issuer or any other Person;

(ii) take or abstain from taking security or collateral from the Issuer or from perfecting security or collateral of the Issuer;

(iii) release, discharge, compromise, realize, enforce or otherwise deal with or do any act or thing in respect of (with or without consideration) any and all collateral, mortgages or other security given by the Issuer or any third party with respect to the obligations or matters contemplated by this Indenture or the Securities;

(iv) accept compromises or arrangements from the Issuer;

(v) apply all monies at any time received from the Issuer or from any security upon such part of the Obligations as the Holders may see fit or change any such application in whole or in part from time to time as the Holders may see fit; and

(vi) otherwise deal with, or waive or modify their right to deal with, the Issuer and all other Persons and any security as the Holders or the Trustee may see fit.

11.16. Default and Enforcement.

If any Guarantor fails to pay in accordance with Section 11.6 hereof, the Trustee may proceed in its name as trustee hereunder in the enforcement of the Guarantee of any such Guarantor and such Guarantor's obligations thereunder and hereunder by any remedy provided by law, whether by legal proceedings or otherwise, and to recover from such Guarantor the obligations.

11.17. Amendment, etc.

No amendment, modification or waiver of any provision of this Indenture relating to any Guarantor or consent to any departure by any Guarantor or any other Person from any such provision will in any event be effective unless it is signed by such Guarantor and the Trustee.

11.18. Acknowledgment.

Each Guarantor, upon the execution and delivery of a Guarantee pursuant to Section 4.15 or 4.20, shall hereby acknowledge communication of the terms of this Indenture and the Securities and shall hereby consent to and approves of the same.

11.19. Costs and Expenses.

Each Guarantor shall pay on demand by the Trustee any and all costs, fees and expenses (including, without limitation, legal fees on a solicitor and client basis) incurred by the Trustee, its agents, advisors and counsel or any of the Holders in enforcing any of their rights under any Guarantee.

11.20. No Merger or Waiver; Cumulative Remedies.

No Guarantee shall operate by way of merger of any of the obligations of a Guarantor under any other agreement, including, without limitation, this Indenture. No failure to exercise and no delay in exercising, on the part of the Trustee or the Holders, any right, remedy, power or privilege hereunder or under this Indenture or the Securities, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under this Indenture or the Securities preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges in the Guarantee and under this Indenture, the Securities and any other document or instrument between a Guarantor and/or the Issuer and the Trustee are cumulative and not exclusive of any rights, remedies, powers and privilege provided by law.

11.21. Survival of Obligations.

Without prejudice to the survival of any of the other obligations of any Guarantor hereunder, the obligations of each Guarantor under Section 11.1 shall survive the payment in full of the Obligations under the Securities, but only if and to the extent such payment is avoided, and in such case shall be enforceable against such Guarantor to the same extent as prior to any such payment and without regard to and without giving effect to any defense, right of offset or counterclaim available to or which may be asserted by the Issuer or any Guarantor.

11.22. Guarantee in Addition to Other Obligations.

The Obligations of each Guarantor under its Guarantee and this Indenture are in addition to and not in substitution for any other Obligations to the Trustee or to any of the Holders in relation to this Indenture or the Securities and any guarantees or security at any time held by or for the benefit of any of them.

11.23. Severability.

Any provision of this Article Eleven which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction unless its removal would substantially defeat the basic intent, spirit and purpose of this Indenture and this Article Eleven.

11.24. Successors and Assigns.

Each Guarantee shall be binding upon and inure to the benefit of each Guarantor and the Trustee and the other Holders and their respective successors and permitted assigns,

except that no Guarantor may assign any of its obligations hereunder or thereunder, except as otherwise permitted in this Indenture.

ARTICLE XII

TRUST MONIES

12.1. Trust Monies.

All Trust Monies shall be held by or delivered to the Trustee in accordance with the provisions of the applicable Security Documents. Trust Monies, if any, shall, so long as no Event of Default has occurred and is continuing, at the direction of the Company, be (a) applied by the Trustee from time to time to the payment of the principal of, premium, if any, and interest on any Notes at maturity or upon redemption or retirement, or to the purchase of Notes upon tender or in the open market or otherwise, (b) released to the extent such cash would be considered Collateral under the Security Documents following such release or (c) applied to cure any Event of Default set forth in Section 6.01(a) or (b) in each case in accordance with the Security Documents.

12.2. Investment of Trust Monies.

All or any part of any Trust Monies held by the Trustee hereunder (except such as may be held for the account of any particular Securities) shall from time to time be invested or reinvested by the Trustee in any Cash Equivalents pursuant to the written direction of the Company, which shall specify the Cash Equivalents in which such Trust Monies shall be invested. Unless a Default or Event of Default occurs and is continuing, any interest or dividends earned or paid on such Cash Equivalents (in excess of any accrued interest paid at the time of purchase) which may be received by the Trustee shall be forthwith paid to the Company. Such Cash Equivalents shall be held by the Trustee as a part of the Collateral, subject to the same provisions hereof as the cash used by it to purchase such Cash Equivalents. The Trustee shall not be liable or responsible for any loss resulting from such investments or sales except only for its own grossly negligent action, its own grossly negligent failure to act, its own material breach of this Indenture or its own willful misconduct in complying with this Section 12.2.

ARTICLE XIII

MISCELLANEOUS

13.1. TIA Controls.

If any provision of this Indenture limits, qualifies, or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control.

13.2. Notices.

Any notices or other communications required or permitted hereunder shall be in writing, and shall be sufficiently given if made by hand delivery, by telex, by telecopier or registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

if to the Issuer or a Guarantor:

Clean Harbors, Inc.
1501 Washington Street
Braintree, MA 02185
Attention: Chief Financial Officer
Fax No: (781) 848-1632

with a copy to:

Davis, Malm & D'Agostine, P.C.
One Boston Place,
37th Floor
Boston, MA 02108
Attention: C. Michael Malm
Fax No: (617) 523-6215

if to the Trustee:

U.S. Bank National Association
One Federal Street
3rd Floor
Boston, MA 02110
Attention: Corporate Trust Services
Fax No: (617) 603-6667

if to the Trustee for presentation of Securities for payment or for registration of transfer or exchange:

U.S. Bank National Association
Corporate Trust Services
Westside Flats Operation Center
60 Livingston Avenue
St. Paul, MN 55107
Attention: Specialized Finance

The Issuer and the Trustee by written notice to each other such Person may designate additional or different addresses for notices to such Person. Any notice or communication to the Issuer and the Trustee, shall be deemed to have been given or made as of the date so delivered if personally delivered; when answered back, if telecopied; and five (5) calendar days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee), except that, with respect to any mailing, notices to the Trustee shall be deemed effective only upon receipt.

Any notice or communication mailed to a Securityholder shall be mailed to him by first class mail or other equivalent means at his address as it appears on the registration books of the Registrar and shall be sufficiently given to him if so mailed within the time prescribed.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

13.3. Communications by Holders with Other Holders .

Securityholders may communicate pursuant to TIA § 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Issuer, the Trustee, the Registrar and any other Person shall have the protection of TIA § 312(c).

13.4. Certificate and Opinion as to Conditions Precedent .

Upon any request or application by the Issuer to the Trustee to take any action under this Indenture, the Issuer shall furnish to the Trustee at the request of the Trustee:

(i) an Officers' Certificate, in form and substance satisfactory to the Trustee, stating that, in the opinion of the signers, all conditions precedent to be performed

or effected by the Issuer, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(ii) an Opinion of Counsel stating that, in the opinion of such counsel, any and all such conditions precedent have been complied with.

13.5. Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture, other than the Officers' Certificate required by Section 4.8, shall include:

(i) a statement that the Person making such certificate or opinion has read such covenant or condition;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such Person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether or not, in the opinion of each such Person, such condition or covenant has been complied with; provided, however, that with respect to matters of fact an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.

13.6. Rules by Trustee, Paying Agent, Registrar.

The Trustee, Paying Agent or Registrar may make reasonable rules for its functions.

13.7. Legal Holidays.

If a payment date is not a Business Day, payment may be made on the next succeeding day that is a Business Day.

13.8. Governing Law.

THIS INDENTURE, THE SECURITIES AND ANY GUARANTEES WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. Each of the

parties hereto agrees to submit to the jurisdiction of the courts of the State of New York in any action or proceeding arising out of or relating to this Indenture, the Securities or any Guarantees.

13.9. No Adverse Interpretation of Other Agreements .

This Indenture may not be used to interpret another indenture, loan or debt agreement of any of the Company or any of its Subsidiaries. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

13.10. No Recourse Against Others .

No Affiliate, director, officer, employee, limited liability company members or stockholder of the Company or any Subsidiary, as such, shall have any liability for any obligations of the Issuer under the Securities or any Guarantee or this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Securityholder by accepting a Security waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Securities.

13.11. Successors.

All agreements of the Issuer and the Guarantors in this Indenture and the Securities and the Guarantees shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successor.

13.12. Duplicate Originals.

All parties may sign any number of copies of this Indenture. Each signed copy or counterpart shall be an original, but all of them together shall represent the same agreement.

13.13. Severability.

In case any one or more of the provisions in this Indenture, the Securities or the Guarantees shall be held invalid, illegal or unenforceable, in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions shall not in any way be affected or impaired thereby, it being intended that all of the provisions hereof shall be enforceable to the full extent permitted by law.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the date first written above.

CLEAN HARBORS, INC.

By: /s/ STEPHEN MOYNIHAN
Name: STEPHEN MOYNIHAN
Title: SENIOR VICE PRESIDENT

GUARANTORS:

ALTAIR DISPOSAL SERVICES, LLC
BATON ROUGE DISPOSAL, LLC
BRIDGEPORT DISPOSAL, LLC
CH INTERNATIONAL HOLDINGS, INC.
CLEAN HARBORS ANDOVER, LLC
CLEAN HARBORS ANTIOCH, LLC
CLEAN HARBORS ARAGONITE, LLC
CLEAN HARBORS ARIZONA, LLC
CLEAN HARBORS BATON ROUGE, LLC
CLEAN HARBORS BDT, LLC
CLEAN HARBORS BUTTONWILLOW, LLC
CLEAN HARBORS CHATTANOOGA, LLC
CLEAN HARBORS COFFEYVILLE, LLC
CLEAN HARBORS COLFAX, LLC
CLEAN HARBORS DEER PARK, L.P.
CLEAN HARBORS DEER TRAIL, LLC
CLEAN HARBORS DISPOSAL SERVICES, INC.
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.
CLEAN HARBORS FINANCIAL SERVICES COMPANY
CLEAN HARBORS FLORIDA, LLC
CLEAN HARBORS GRASSY MOUNTAIN, LLC
CLEAN HARBORS KANSAS, LLC
CLEAN HARBORS KINGSTON FACILITY CORPORATION
CLEAN HARBORS LAPORTE, L.P.
CLEAN HARBORS LAUREL, LLC

CLEAN HARBORS LONE MOUNTAIN, LLC
CLEAN HARBORS LONE STAR CORP.
CLEAN HARBORS LOS ANGELES, LLC
CLEAN HARBORS (MEXICO), INC.
CLEAN HARBORS OF BALTIMORE, INC.
CLEAN HARBORS OF BRAINTREE, INC.
CLEAN HARBORS OF CONNECTICUT, INC.
CLEAN HARBORS OF NATICK, INC.
CLEAN HARBORS OF TEXAS, LLC
CLEAN HARBORS PECATONICA, LLC
CLEAN HARBORS PLAQUEMINE, LLC
CLEAN HARBORS PPM, LLC
CLEAN HARBORS REIDSVILLE, LLC
CLEAN HARBORS SAN JOSE, LLC
CLEAN HARBORS SERVICES, INC.
CLEAN HARBORS TENNESSEE, LLC
CLEAN HARBORS WESTMORLAND, LLC
CLEAN HARBORS WHITE CASTLE, LLC
CROWLEY DISPOSAL, LLC
DISPOSAL PROPERTIES, LLC
GSX DISPOSAL, LLC
HARBOR INDUSTRIAL SERVICES TEXAS, L.P.
HARBOR MANAGEMENT CONSULTANTS, INC.
HILLIARD DISPOSAL, LLC
MURPHY'S WASTE OIL SERVICE, INC.
NORTHEAST CASUALTY REAL PROPERTY, LLC
ROEBUCK DISPOSAL, LLC
SAWYER DISPOSAL SERVICES, LLC
SERVICE CHEMICAL, LLC
SPRING GROVE RESOURCE RECOVERY, INC.
TULSA DISPOSAL, LLC,
each as a Guarantor

By: /s/ STEPHEN MOYNIHAN
Name: STEPHEN MOYNIHAN
Title: SENIOR VICE PRESIDENT

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ PETER M. MURPHY
Name: PETER M. MURPHY
Title: ASSISTANT VICE PRESIDENT

Exhibit A

[FORM OF INITIAL NOTE][a]

[face OF SECURITY]

CLEAN HARBORS, INC.

11 1/4% Senior Secured Note due 2012

No. Principal Amount $

ISIN No.
CUSIP No.

CLEAN HARBORS, INC., a Massachusetts corporation (the "Company" or the "Issuer," which terms include any of its successors under the Indenture hereinafter referred to), for value received promise to pay to CEDE & CO. or registered assigns, the principal sum of Dollars ($) on July 15, 2012.

Interest Payment Dates: January 15 and July 15; commencing [ ], 20[ ].

Record Dates: January 1 and July 1.

Reference is made to the further provisions of this Security contained herein, which will for all purposes have the same effect as if set forth at this place.

[a] Add Private Placement Legend and, if appropriate, Global Security Legend.

IN WITNESS WHEREOF, the Issuer has caused this Security to be signed manually or by facsimile by their duly authorized officers.

Dated:

CLEAN HARBORS, INC.

By: _____
Name:
Title:

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This is one of the 11 1/4% Senior Secured Notes due 2012 described in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

[REVERSE OF SECURITY]

CLEAN HARBORS, INC.

11 1/4% Senior Secured Note due 2012

1. Interest.

CLEAN HARBORS, INC., a Massachusetts corporation (the "Company", or the "Issuer," which terms include any of its successors under the Indenture hereinafter referred to), promise to pay interest on the principal amount of this Security at the rate per annum shown above. The Issuer will pay interest semiannually on January 15 and July 15 of each year (the "Interest Payment Date"), commencing [ ], 20[ ]. Interest on this Security will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from and including [ ], 20[ ]. Interest on this Security will be computed on the basis of a 360-day year of twelve 30-day months.

The Issuer shall pay interest on overdue principal from time to time on demand at the rate borne by this Security plus 2% and on overdue installments of interest (without regard to any applicable grace periods) to the extent lawful.

2. Method of Payment.

The Issuer shall pay interest on the Securities (except defaulted interest) to the Persons who are the registered Holders at the close of business on the Record Date immediately preceding the Interest Payment Date even if the Securities are canceled on registration of transfer or registration of exchange (including pursuant to an Exchange Offer (as defined in the Indenture)) after such Record Date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Issuer shall pay principal, premium, if any and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts ("U.S. Legal Tender"). However, the Issuer may pay principal, premium, if any, and interest by wire transfer of federal funds, or interest by check payable in such U.S. Legal Tender. The Issuer may deliver any such interest payment to the Paying Agent or to a Holder at the Holder's registered address.

3. Paying Agent and Registrar.

Initially, U.S. Bank National Association (the "Trustee") will act as Paying Agent and Registrar. The Issuer may change any Paying Agent, Registrar or co-Registrar without notice to the Holders. The Company or any of its Subsidiaries may, subject to certain exceptions, act as Registrar or co-Registrar.

4. Indenture.

The Issuer issued the Securities under an Indenture, dated as of June 30, 2004 (the " Indenture"), among the Issuer, the Guarantors and the Trustee. This Security is one of a duly authorized issue of Securities of the Issuer designated as their 11 1/4% Senior Secured Notes due 2012. Capitalized terms herein are used as defined in the Indenture unless otherwise defined herein. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb) (the " TIA"), as in effect on the date of the Indenture until such time as the Indenture is qualified under the TIA, and thereafter as in effect on the date on which the Indenture is qualified under the TIA. Notwithstanding anything to the contrary herein, the Securities are subject to all such terms, and Holders of Securities are referred to the Indenture and the TIA for a statement of them. The Securities are general obligations of the Issuer unlimited in amount.

5. Optional Redemption.

The Issuer may redeem the Securities, in whole at any time or in part from time to time, on and after July 15, 2008, upon not less than 30 nor more than 60 days' notice, at the following redemption prices (expressed as percentages of the principal amount thereof) if redeemed during the twelve-month period commencing on July 15 of the years set forth below, plus, in each case, accrued and unpaid interest thereon, if any, to the date of redemption (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date):

Year	Percentage
2008	105.625%
2009	102.813%
2010 and thereafter	100.000%

The Issuer may redeem the Securities, at any time, or from time to time, on or prior to July 15, 2007, by using the Net Cash Proceeds of one or more Equity Offerings to redeem up to 35% in aggregate principal amount of the Securities originally issued under the Indenture at a redemption price equal to 111.250% of the principal amount thereof plus accrued and unpaid interest thereon, if any, to the date of redemption; provided, however, that after any such redemption the aggregate principal amount of the Securities outstanding must equal at least 65% of the aggregate amount of the Securities originally issued under the Indenture. In order to effect the foregoing redemption with the net cash proceeds of any Equity Offering, the Issuer shall make such redemption not more than 90 days after the consummation of any such Equity Offering.

6. Notice of Redemption.

Notice of redemption shall be mailed by first-class mail at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at such Holder's registered address. Securities in denominations of $1,000 may be redeemed only in whole. The Trustee may select for redemption portions (equal to $1,000 or any integral multiple thereof) of the principal of Securities that have denominations larger than $1,000.

If any Security is to be redeemed in part only, the notice of redemption that relates to such Security shall state the portion of the principal amount thereof to be redeemed. A new Security in a principal amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of the original Security. On and after the Redemption Date, interest will cease to accrue on Securities or portions thereof called for redemption, subject to the provisions of the Indenture.

7. Change of Control Offer.

Upon the occurrence of a Change of Control, the Issuer will be required, as and to the extent set forth in the Indenture, to offer to purchase all of the outstanding Securities at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the date of repurchase (subject to the right of Securityholders of record on the relevant record date to receive interest due on the relevant interest payment date); provided however, that notwithstanding the occurrence of a Change of Control, the Issuer shall not be obligated to repurchase the Securities pursuant to this paragraph 7 in the event that the Issuer have exercised their right to redeem all of the Securities under the terms of paragraph 5 hereof).

8. Limitation on Asset Sales.

The Issuer is, subject to certain conditions, obligated to make an offer to purchase Securities at 100% of their principal amount, plus accrued and unpaid interest, if any, thereon to the date of repurchase with certain Net Cash Proceeds of certain sales or other dispositions of assets in accordance with the Indenture.

9. Excess Cash Flow.

Within 120 days of June 30 of each year (beginning June 30, 2005), the Issuer is, subject to certain exceptions, obligated to make an offer to purchase Securities at 104% of their principal amount, plus accrued and unpaid interest, if any, thereon to the date of repurchase with certain Excess Cash Flow in accordance with the Indenture.

10. Registration Rights.

Pursuant to the Registration Rights Agreement, the Issuer will be obligated to consummate an exchange offer pursuant to which the Holder of this Security shall have the right to exchange this Security for the Issuer's 11 1/4% Senior Secured Notes due 2012, which shall have been registered under the Securities Act, in like principal amount and having terms substantially identical in all material respects to this Security. The Holders of this Security shall be entitled to receive certain additional interest payments in the event such exchange offer is not consummated and upon certain other conditions, all pursuant to and in accordance with the terms of the Registration Rights Agreement.

11. Denominations; Transfer; Exchange.

The Securities are in registered form, without coupons, in denominations of $1,000 and integral multiples of $1,000. A Holder shall register the transfer of or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay certain transfer taxes or similar governmental charges payable in connection therewith as permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities or portions thereof selected for redemption, except the unredeemed portion of any security being redeemed in part.

12. Persons Deemed Owners.

The registered Holder of a Security shall be treated as the owner of it for all purposes.

13. Unclaimed Funds.

If funds for the payment of principal, premium, if any, or interest remain unclaimed for two years, the Trustee and the Paying Agent will repay the funds to the Issuer at their request. After that, all liability of the Trustee and such Paying Agent with respect to such funds shall cease.

14. Discharge Prior to Redemption or Maturity.

The Issuer and any Guarantor may be discharged from their obligations under the Indenture or the Securities and any Guarantee except for certain provisions thereof, and may be discharged from obligations to comply with certain covenants contained in the Indenture and

the Securities and any Guarantee, in each case upon satisfaction of certain conditions specified in the Indenture.

15. Amendment; Supplement; Waiver.

Subject to certain exceptions, the Indenture and the Securities and any Guarantee may be amended or supplemented with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding, and any existing Default or Event of Default or compliance with any provision may be waived with the consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding. Without notice to or consent of any Holder, the parties thereto may amend or supplement the Indenture, the Securities and the Guarantees, to, among other things, cure any ambiguity, defect or inconsistency, provide for uncertificated Securities and any Guarantee in addition to or in place of certificated Securities or comply with any requirements of the Commission in connection with the qualification of the Indenture under the TIA, or make any other change that does not materially adversely affect the rights of any Holder of a Security.

16. Restrictive Covenants.

The Indenture contains certain covenants that, among other things, limit the ability of the Company and its Restricted Subsidiaries to make restricted payments, to incur indebtedness, to create liens, to sell assets, to permit restrictions on dividends and other payments by Restricted Subsidiaries of the Company to the Company, to consolidate, merge or sell all or substantially all of its assets or to engage in transactions with affiliates. The limitations are subject to a number of important qualifications and exceptions. The Company must annually report to the Trustee on compliance with such limitations.

17. Defaults and Remedies.

If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of Securities then outstanding may declare all the Securities to be due and payable immediately in the manner and with the effect provided in the Indenture. Holders of Securities may not enforce the Indenture, the Securities or any Guarantee except as provided in the Indenture. The Trustee is not obligated to enforce the Indenture, the Securities or the Guarantees, unless it has received indemnity satisfactory to it. The Indenture permits, subject to certain limitations therein provided, Holders of a majority in aggregate principal amount of the Securities or any Guarantee then outstanding to direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of Securities notice of certain continuing Defaults or Events of Default if it determines that withholding notice is in their interest.

18. Trustee Dealings with Issuer.

The Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer, their Subsidiaries or their respective Affiliates as if it were not the Trustee.

19. No Recourse Against Others.

No Affiliate, stockholder, director, officer, employee or limited liability company member of the Issuer or any of their Subsidiaries shall have any liability for any obligations of the Issuer under the Securities or any Guarantee or the Indenture or for any claim based on, in respect of or by reason of, such obligations or their creation. Each Holder of a Security by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Securities.

20. Authentication.

This Security shall not be valid until the Trustee or authenticating agent signs the certificate of authentication on this Security.

21. Abbreviations and Defined Terms.

Customary abbreviations may be used in the name of a Holder of a Security or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

22. Governing Law.

This Security shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to applicable principles of conflicts of laws to the extent that the application of the laws of another jurisdiction would be required thereby.

23. CUSIP and ISIN Numbers.

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer have caused CUSIP and ISIN numbers to be printed on the Securities as a convenience to the Holders of the Securities. No representation is made as to the accuracy of such numbers as printed on the Securities and reliance may be placed only on the other identification numbers printed hereon.

24. Indenture.

Each Holder, by accepting a Security, agrees to be bound by all of the terms and provisions of the Indenture, as the same may be amended from time to time.

The Issuer will furnish to any Holder of a Security upon written request and without charge a copy of the Indenture which has the text of this Security in larger type. Requests may be made to: Clean Harbors, Inc., 1501 Washington Street, Braintree, MA 02185, Attn: Chief Financial Officer.

ASSIGNMENT FORM

I or we assign and transfer this Security to

(Print or type name, address and zip code of assignee or transferee)

(Insert Social Security or other identifying number of assignee or transferee)

and irrevocably appoint _____ agent to transfer this Security on the books of the Issuer. The agent may substitute another to act for him.

Dated: _____

Signed: _____

(Sign exactly as name appears on the other side of this Security)

Signature Guarantee:

_____

Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor program reasonably acceptable to the Trustee)

In connection with any transfer of this Security occurring prior to the date which is the earlier of (i) the date of the declaration by the Commission of the effectiveness of a registration statement under the Securities Act of 1933, as amended (the " Securities Act"), covering resales of this Security (which effectiveness shall not have been suspended or terminated at the date of the transfer) and (ii) June 30, 2006, the undersigned confirms that it has not utilized any general solicitation or general advertising in connection with the transfer and that this Security is being transferred:

[Check One]

☐ (1) to the Issuer or a subsidiary thereof; or

☐ (2) pursuant to and in compliance with Rule 144A under the Securities Act; or

☐ (3) to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) that has furnished to the Trustee a signed letter containing certain representations and agreements (the form of which letter can be obtained from the Trustee); or

☐ (4) outside the United States to a "foreign person" in compliance with Rule 904 of Regulation S under the Securities Act; or

☐ (5) pursuant to the exemption from registration provided by Rule 144 under the Securities Act; or

☐ (6) pursuant to an effective registration statement under the Securities Act; or

☐ (7) pursuant to another available exemption from the registration requirements of the Securities Act;

and unless the box below is checked, the undersigned confirms that such Security is not being transferred to an " affiliate" of the Issuer as defined in Rule 144 under the Securities Act of 1933, as amended (an "Affiliate"):

☐ The transferee is an Affiliate of the Issuer.

Unless one of the items is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered Holder thereof; provided that if box (3), (4), (5) or (7) is checked, the Issuer or the Trustee may require, prior to registering any such transfer of the Securities, in its sole discretion, such legal opinions, certifications (including an investment letter in the case of box (3) or (4)) and other information as the Trustee or the Issuer have reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

If none of the foregoing boxes is checked, the Trustee or Registrar shall not be obligated to register this Security in the name of any person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 2.16 of the Indenture shall have been satisfied.

Dated: _____

Signed: _____

(Sign exactly as name appears on the other side of this Security)

Signature Guarantee: _____

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____

NOTICE: To be executed by an executive officer

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Company pursuant to Section 4.17, Section 4.18 or Section 4.21 of the Indenture, check the appropriate box:

Section 4.17 ☐ Section 4.18 ☐ Section 4.21 ☐

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 4.17, Section 4.18 or Section 4.21 of the Indenture, state the amount: $_____

Dated: _____ Signed: _____

(Sign exactly as name appears on the other side of this Security)

Signature Guarantee:

_____

Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor program reasonably acceptable to the Trustee)

Exhibit B

[FORM OF EXCHANGE NOTE][a]

[face OF SECURITY]

CLEAN HARBORS, INC.

11 1/4% Senior Secured Note due 2012

CUSIP No.
ISIN No.
No. $

CLEAN HARBORS, INC., a Massachusetts corporation (the "Company" or the "Issuer," which terms include any of its successors under the Indenture hereinafter referred to), for value received promise to pay to CEDE & CO. or registered assigns, the principal sum of Dollars ($), on July 15, 2012.

Interest Payment Dates: January 15 and July 15, commencing [ ], 20[ ].

Record Dates: January 1 and July 1.

Reference is made to the further provisions of this Security contained herein, which will for all purposes have the same effect as if set forth at this place.

[a] If appropriate, add Global Security Legend.

IN WITNESS WHEREOF, the Issuer has caused this Security to be signed manually or by facsimile by their duly authorized officers.

Dated:

CLEAN HARBORS, INC.

By: _____
Name:
Title:

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This is one of the 11 1/4% Senior Secured Notes due 2012 described in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

[REVERSE OF SECURITY]

CLEAN HARBORS, INC.

11 1/4% Senior Secured Note due 2012

1. Interest.

CLEAN HARBORS, INC., a Massachusetts corporation (the "Company" or the "Issuer," which terms include any of its successors under the Indenture hereinafter referred to), promise to pay interest on the principal amount of this Security at the rate per annum shown above. The Issuer will pay interest semiannually on January 15 and July 15 of each year (the "Interest Payment Date"), commencing [ ], 20[ ]. Interest on this Security will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from and including [ ], 20[ ]. Interest on this Security will be computed on the basis of a 360-day year of twelve 30-day months.

The Issuer shall pay interest on overdue principal from time to time on demand at the rate borne by this Security plus 2% and on overdue installments of interest (without regard to any applicable grace periods) to the extent lawful.

2. Method of Payment.

The Issuer shall pay interest on the Securities (except defaulted interest) to the Persons who are the registered Holders at the close of business on the Record Date immediately preceding the Interest Payment Date even if the Securities are canceled on registration of transfer or registration of exchange (including pursuant to an Exchange Offer (as defined in the Indenture)) after such Record Date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Issuer shall pay principal, premium, if any and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts ("U.S. Legal Tender"). However, the Issuer may pay principal, premium, if any, and interest by wire transfer of federal funds, or interest by check payable in such U.S. Legal Tender. The Issuer may deliver any such interest payment to the Paying Agent or to a Holder at the Holder's registered address.

3. Paying Agent and Registrar.

Initially, U.S. Bank National Association (the "Trustee") will act as Paying Agent and Registrar. The Issuer may change any Paying Agent, Registrar or co-Registrar without notice to the Holders. The Company or any of its Subsidiaries may, subject to certain exceptions, act as Registrar or co-Registrar.

4. Indenture.

The Issuer issued the Securities under an Indenture, dated as of June 30, 2004 (the " Indenture"), among the Issuer, the Guarantors and the Trustee. This Security is one of a duly authorized issue of Securities of the Issuer designated as their 11 1/4% Senior Secured Notes due 2012. Capitalized terms herein are used as defined in the Indenture unless otherwise defined herein. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb) (the " TIA"), as in effect on the date of the Indenture until such time as the Indenture is qualified under the TIA, and thereafter as in effect on the date on which the Indenture is qualified under the TIA. Notwithstanding anything to the contrary herein, the Securities are subject to all such terms, and Holders of Securities are referred to the Indenture and the TIA for a statement of them. The Securities are general obligations of the Issuer unlimited in amount.

5. Optional Redemption.

The Issuer may redeem the Securities, in whole at any time or in part from time to time, on and after July 15, 2008, upon not less than 30 nor more than 60 days' notice, at the following redemption prices (expressed as percentages of the principal amount thereof) if redeemed during the twelve-month period commencing on July 15 of the years set forth below, plus, in each case, accrued and unpaid interest thereon, if any, to the date of redemption (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date):

Year	Percentage
2008	105.625%
2009	102.813%
2010 and thereafter	100.000%

The Issuer may redeem the Securities, at any time, or from time to time, on or prior to July 15, 2007, by using the Net Cash Proceeds of one or more Equity Offerings to redeem up to 35% in aggregate principal amount of the Securities originally issued under the Indenture at a redemption price equal to 111.250% of the principal amount thereof plus accrued and unpaid interest thereon, if any, to the date of redemption; provided, however, that after any such redemption the aggregate principal amount of the Securities outstanding must equal at least 65% of the aggregate amount of the Securities originally issued under the Indenture. In order to effect the foregoing redemption with the net cash proceeds of any Equity Offering, the Issuer shall make such redemption not more than 90 days after the consummation of any such Equity Offering.

6. Notice of Redemption.

Notice of redemption shall be mailed by first-class mail at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at such Holder's registered address. Securities in denominations of $1,000 may be redeemed only in whole. The Trustee may select for redemption portions (equal to $1,000 or any integral multiple thereof) of the principal of Securities that have denominations larger than $1,000.

If any Security is to be redeemed in part only, the notice of redemption that relates to such Security shall state the portion of the principal amount thereof to be redeemed. A new Security in a principal amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of the original Security. On and after the Redemption Date, interest will cease to accrue on Securities or portions thereof called for redemption, subject to the provisions of the Indenture.

7. Change of Control Offer.

Upon the occurrence of a Change of Control, the Issuer will be required, as and to the extent set forth in the Indenture, to offer to purchase all of the outstanding Securities at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the date of repurchase (subject to the right of Securityholders of record on the relevant record date to receive interest due on the relevant interest payment date); provided, however, that notwithstanding the occurrence of a Change of Control, the Issuer shall not be obligated to repurchase the Securities pursuant to this paragraph 7 in the event that the Issuer have exercised their right to redeem all of the Securities under the terms of paragraph 5 hereof).

8. Limitation on Asset Sales.

The Issuer is, subject to certain conditions, obligated to make an offer to purchase Securities at 100% of their principal amount, plus accrued and unpaid interest, if any, thereon to the date of repurchase with certain Net Cash Proceeds of certain sales or other dispositions of assets in accordance with the Indenture.

9. Excess Cash Flow.

Within 120 days of June 30 of each year (beginning June 30, 2005), the Issuer is, subject to certain exceptions, obligated to make an offer to purchase Securities at 104% of their principal amount, plus accrued and unpaid interest, if any, thereon to the date of repurchase with certain Excess Cash Flow in accordance with the Indenture.

10. Denomination, Transfer, Exchange.

The Securities are in registered form, without coupons, in denominations of $1,000 and integral multiples of $1,000. A Holder shall register the transfer of or exchange Securities

in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay certain transfer taxes or similar governmental charges payable in connection therewith as permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities or portions thereof selected for redemption, except the unredeemed portion of any security being redeemed in part.

11. Persons Deemed Owners.

The registered Holder of a Security shall be treated as the owner of it for all purposes.

12. Unclaimed Funds.

If funds for the payment of principal, premium, if any, or interest remain unclaimed for two years, the Trustee and the Paying Agent will repay the funds to the Issuer at their request. After that, all liability of the Trustee and such Paying Agent with respect to such funds shall cease.

13. Discharge Prior to Redemption or Maturity.

The Issuer and the Subsidiary Guarantors, if any, may be discharged from their obligations under the Indenture or the Securities and any Guarantee except for certain provisions thereof, and may be discharged from obligations to comply with certain covenants contained in the Indenture and the Securities and any Guarantee, in each case upon satisfaction of certain conditions specified in the Indenture.

14. Amendment; Supplement; Waiver.

Subject to certain exceptions, the Indenture and the Securities and any Guarantees may be amended or supplemented with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding, and any existing Default or Event of Default or compliance with any provision may be waived with the consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding. Without notice to or consent of any Holder, the parties thereto may amend or supplement the Indenture, the Securities and any Guarantee to, among other things, cure any ambiguity, defect or inconsistency, provide for uncertificated Securities in addition to or in place of certificated Securities or comply with any requirements of the Commission in connection with the qualification of the Indenture under the TIA, or make any other change that does not materially adversely affect the rights of any Holder of a Security.

15. Restrictive Covenants.

The Indenture contains certain covenants that, among other things, limit the ability of the Company and its Restricted Subsidiaries to make restricted payments, to incur indebtedness, to create liens, to sell assets, to permit restrictions on dividends and other payments by

Restricted Subsidiaries of the Company to the Company, to consolidate, merge or sell all or substantially all of its assets or to engage in transactions with affiliates. The limitations are subject to a number of important qualifications and exceptions. The Company must annually report to the Trustee on compliance with such limitations.

16. Defaults and Remedies.

If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of Securities then outstanding may declare all the Securities to be due and payable immediately in the manner and with the effect provided in the Indenture. Holders of Securities may not enforce the Indenture, the Securities or any Guarantee except as provided in the Indenture. The Trustee is not obligated to enforce the Indenture, the Securities or the Guarantees, unless it has received indemnity satisfactory to it. The Indenture permits, subject to certain limitations therein provided, Holders of a majority in aggregate principal amount of the Securities then outstanding to direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of Securities notice of certain continuing Defaults or Events of Default if it determines that withholding notice is in their interest.

17. Trustee Dealings with Issuer.

The Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer, their Subsidiaries or their respective Affiliates as if it were not the Trustee.

18. No Recourse Against Others.

No Affiliate, stockholder, director, officer, employee or limited liability company member of the Issuer or any of their Subsidiaries shall have any liability for any obligations of the Issuer under the Securities or any Guarantee or the Indenture or for any claim based on, in respect of or by reason of, such obligations or their creation. Each Holder of a Security by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Securities.

19. Authentication.

This Security shall not be valid until the Trustee or authenticating agent signs the certificate of authentication on this Security.

20. Abbreviations and Defined Terms.

Customary abbreviations may be used in the name of a Holder of a Security or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

21. Governing Law.

This Security shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to applicable principles of conflicts of laws to the extent that the application of the laws of another jurisdiction would be required thereby.

22. CUSIP and ISIN Numbers.

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer have caused CUSIP and ISIN numbers to be printed on the Securities as a convenience to the Holders of the Securities. No representation is made as to the accuracy of such numbers as printed on the Securities and reliance may be placed only on the other identification numbers printed hereon.

23. Indenture.

Each Holder, by accepting a Security, agrees to be bound by all of the terms and provisions of the Indenture, as the same may be amended from time to time.

The Issuer will furnish to any Holder of a Security upon written request and without charge a copy of the Indenture which has the text of this Security in larger type. Requests may be made to: Clean Harbors, Inc., 1501 Washington Street, Braintree, MA 02185, Attn: Chief Financial Officer.

ASSIGNMENT FORM

I or we assign and transfer this Security to

(Print or type name, address and zip code of assignee or transferee)

(Insert Social Security or other identifying number of assignee or transferee)

and irrevocably appoint _____ agent to transfer this Security on the books of the Issuer. The agent may substitute another to act for him.

Dated: _____ Signed: _____

(Sign exactly as name appears on the other side of this Security)

Signature Guarantee:

Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor program reasonably acceptable to the Trustee)

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Company pursuant to Section 4.17, Section 4.18 or Section 4.21 of the Indenture, check the appropriate box:

Section 4.17 ☐ Section 4.18 ☐ Section 4.21 ☐

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 4.17, Section 4.18 or Section 4.21 of the Indenture, state the amount: $_____

Dated: _____ Signed: _____

(Sign exactly as name appears on the other side of this Security)

Signature Guarantee: _____

Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor program reasonably acceptable to the Trustee)

Exhibit C

Form of Certificate to Be
Delivered in Connection with
Transfers to Non-QIB Accredited Investors

[Date]

Attention:

Re: Clean Harbors, Inc.
11 1/4% Senior Secured Notes due 2012 (the "Securities")

Ladies and Gentlemen:

In connection with our proposed purchase of the Securities of Clean Harbors, Inc. (the " Issuer"), we confirm that:

1. We have received a copy of the Offering Circular (the "Offering Circular"), dated [ ], 20[ ] relating to the Securities and such other information as we deem necessary in order to make our investment decision. We acknowledge that we have read and agreed to the matters stated on pages (i) and (ii) of the Offering Circular and in the section entitled "Transfer Restrictions" of the Offering Circular, including the restrictions on duplication and circulation of the Offering Circular.

2. We understand that any subsequent transfer of the Securities is subject to certain restrictions and conditions set forth in the Indenture relating to the Securities (as described in the Offering Circular) and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Securities except in compliance with, such restrictions and conditions and the Securities Act of 1933, as amended (the " Securities Act").

3. We understand that the offer and sale of the Securities have not been registered under the Securities Act, and that the Securities may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell or otherwise transfer any Securities prior to the date which is two years after the original issuance of the Securities, and if such transfer is in respect of any aggregate principal amount of Securities of less than $250,000, also furnishes an opinion of counsel acceptable to the Issuer that such transfer complies with the Securities Act, we will do so only (i) to the Issuer or any of their subsidiaries, (ii) inside the United States in accordance with Rule 144A under the Securities Act to a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act), (iii) inside the United States to an institutional "accredited investor" (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to the Trustee (as

defined in the Indenture relating to the Securities), a signed letter containing certain representations and agreements relating to the restrictions on transfer of the Securities, (iv) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, (v) pursuant to the exemption from registration provided by Rule 144 under the Securities Act (if available), or (vi) pursuant to an effective registration statement under the Securities Act, and we further agree to provide to any person purchasing any of the Securities from us a notice advising such purchaser that resales of the Securities are restricted as stated herein.

4. We understand that, on any proposed resale of any Securities, we will be required to furnish to the Trustee and the Issuer such certification, legal opinions and other information as the Trustee and the Issuer may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Securities purchased by us will bear a legend to the foregoing effect.

5. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Securities, and we and any accounts for which we are acting are each able to bear the economic risk of our or their investment, as the case may be.

6. We are acquiring the Securities purchased by us for our account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion, and we are acquiring the Securities not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act.

You and the Issuer are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

By: _____
Name:
Title:

Exhibit D

Form of Certificate to Be
Delivered in Connection with
Transfers Pursuant to Regulation S

[Date]

Attention:

Re: Clean Harbors, Inc.
11 1/4% Senior Secured Notes due 2012 (the "Securities")

In connection with our proposed sale of $_____ aggregate principal amount of the Securities, we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the U.S. Securities Act of 1933, as amended (the " Securities Act"), and, accordingly, we represent that:

(1) the offer of the Securities was not made to a person in the United States;

(2) either (a) at the time the buy offer was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States, or (b) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither we nor any person acting on our behalf knows that the transaction has been prearranged with a buyer in the United States;

(3) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable;

(4) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and

(5) we have advised the transferee of the transfer restrictions applicable to the Securities.

You and the Issuer are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferor]

By: _____

Authorized Signature

Exhibit E

[FORM OF]

GUARANTEE

For value received, the undersigned hereby unconditionally guarantees, as principal obligor and not only as a surety, to the Holder of this Security the cash payments in United States dollars of principal of, premium, if any, and interest on this Security in the amounts and at the times when due and interest on the overdue principal, premium, if any, and interest, if any, of this Security, if lawful, and the payment or performance of all other obligations of the Issuer under the Indenture (as defined below) or the Securities, to the Holder of this Security and the Trustee, all in accordance with and subject to the terms and limitations of this Security, Article Eleven of the Indenture and this Guarantee. This Guarantee will become effective in accordance with Article Eleven of the Indenture and its terms shall be evidenced therein. The validity and enforceability of any Guarantee shall not be affected by the fact that it is not affixed to any particular Security.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Indenture dated as of June 30, 2004, among Clean Harbors, Inc., a Massachusetts corporation (the "Company" or the "Issuer"), the Guarantors, and U.S. Bank National Association, as trustee (the " Trustee").

The obligations of the undersigned to the Holders of Securities and to the Trustee pursuant to this Guarantee and the Indenture are expressly set forth in Article Eleven of the Indenture and reference is hereby made to the Indenture for the precise terms of the Guarantee and all of the other provisions of the Indenture to which this Guarantee relates.

THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. The undersigned Guarantor hereby agrees to submit to the jurisdiction of the courts of the State of New York in any action or proceeding arising out of or relating to this Guarantee.

This Guarantee is subject to release upon the terms set forth in the Indenture.

IN WITNESS WHEREOF, each Guarantor has caused its Guarantee to be duly executed.

[GUARANTORS]

By: _____

Name:
Title:

Exhibit 10.48

THIS WARRANT AND ANY SECURITIES ACQUIRED UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAW OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION TO THE REGISTRATION REQUIREMENTS OF SUCH ACT AND SUCH LAWS. THIS WARRANT AND SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT IN COMPLIANCE WITH THE CONDITIONS SPECIFIED IN THIS WARRANT.

CLEAN HARBORS, INC.

COMMON STOCK PURCHASE WARRANT

No. W- June 30, 2004

Warrant to Purchase Shares of Common Stock

CLEAN HARBORS, INC., a Massachusetts corporation (the "Company"), for value received, hereby certifies that Cerberus CH LLC or its registered assigns (the "Holder"), is entitled to purchase from the Company shares of duly authorized, validly issued, fully paid and nonassessable shares of Common Stock, par value $.01 per share, of the Company (the "Common Stock"), at a purchase price equal to the Purchase Price (this "Warrant"), at any time or from time to time but prior to 5:00 P.M., New York City time, on September 10, 2009 (the "Expiration Date"), all subject to the terms, conditions and adjustments set forth below in this Warrant; provided, that the purchase price per share of Common Stock hereunder shall not in any event be less than the par value of the Common Stock. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned such terms in the Redemption Agreement.

This Warrant is one of the "Warrants" issued under the Redemption Agreement (as defined herein). This Warrant, together with the other warrants issued under the Redemption Agreement are referred to herein collectively as the "Warrants".

1. DEFINITIONS. As used herein, unless the context otherwise requires, the following terms shall have the meanings indicated:

"Additional Shares of Common Stock" shall mean all shares (including treasury shares) of Common Stock issued or sold (or, pursuant to Section 3.3 or 3.4, deemed to be issued) by the Company after the date hereof, whether or not subsequently reacquired or retired by the Company, other than

(a) shares issued upon the exercise of the Warrants,

(b) such number of additional shares as may become issuable upon the exercise of the Warrants by reason of adjustments required pursuant to the anti-dilution provisions applicable to the Warrants as in effect on the date hereof,

(c) (i) shares (not to exceed 3,539,450 shares as constituted on the date hereof) of Common Stock or options exercisable therefor, issued or to be issued under any employee stock option or purchase plan or plans, or pursuant to compensatory or incentive agreements, for officers, employees or consultants of the Company or any of its Subsidiaries, in each case adopted or assumed after such date by the Company's Board of Directors; provided in each case that the exercise or purchase price for any such share shall not be less than the Current Market Price of the Common Stock on the date of the grant (or, in the case of shares issued under the Company's employee stock purchase plan, at such other price as is then permitted for broadly-based employee stock purchase plans under Section 423 of the Internal Revenue Code of 1986, as amended), and (ii) such additional number of shares as may become issuable pursuant to the terms of any such plans by reason of adjustments required pursuant to antidilution provisions applicable to such securities in order to reflect any subdivision or combination of Common Stock, by reclassification or otherwise, or any dividend on Common Stock payable in Common Stock.

"Business Day" shall mean any day other than a Saturday or a Sunday or any day on which national banks are authorized or required by law to close. Any reference to "days" (unless Business Days are specified) shall mean calendar days.

"Commission" shall mean the Securities and Exchange Commission or any successor agency having jurisdiction to enforce the Securities Act.

"Common Stock" shall have the meaning assigned to it in the introduction to this Warrant, such term to include any stock into which such Common Stock shall have been changed or any stock resulting from any reclassification of such Common Stock, and all other stock of any class or classes (however designated) of the Company the holders of which have the right, without limitation as to amount, either to all or to a share of the balance of current dividends and liquidating dividends after the payment of dividends and distributions on any shares entitled to preference.

"Company" shall have the meaning assigned to it in the introduction to this Warrant, such term to include any corporation or other entity which shall succeed to or assume the obligations of the Company hereunder in compliance with Section 4.

"Convertible Securities" shall mean any evidences of indebtedness, shares of stock (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Additional Shares of Common Stock.

"Current Market Price" shall mean, on any date specified herein, the Market Price on such date in the case of calculation made under clause (c)(i) of the definition of Additional Shares of Common Stock and the average of the daily Market Prices during the 10 consecutive trading days before such date for all other calculations, except that, if on any such date the shares of Common Stock are not listed or admitted for trading on any national securities exchange or

quoted in the over-the-counter market, the Current Market Price shall be the Market Price on such date.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations thereunder, or any successor statute.

"Expiration Date" shall have the meaning assigned to it in the introduction to this Warrant.

"Fair Value" shall mean, on any date specified herein (i) in the case of cash, the dollar amount thereof, (ii) in the case of a security, the Current Market Price, and (iii) in all other cases, the fair value thereof (as of a date which is within 20 days of the date as of which the determination is to be made) as determined mutually by the Company's Board of Directors and the holders of a majority of the Warrant Shares then issuable upon exercise of all Warrants then outstanding.

"Holder" shall have the meaning assigned to it in the introduction to this Warrant.

"Initial Holder" shall mean Cerberus CH LLC.

"Market Price" shall mean, on any date specified herein, the amount per share of the Common Stock, equal to (i) the last reported sale price of such Common Stock, regular way, on such date or, in case no such sale takes place on such date, the average of the closing bid and asked prices thereof regular way on such date, in either case as officially reported on the principal national securities exchange on which such Common Stock is then listed or admitted for trading, (ii) if such Common Stock is not then listed or admitted for trading on any national securities exchange but is designated as a national market system security by the NASD, the last reported trading price of the Common Stock on such date, (iii) if there shall have been no trading on such date or if the Common Stock is not so designated, the average of the closing bid and asked prices of the Common Stock on such date as shown by the NASD automated quotation system, or (iv) if such Common Stock is not then listed or admitted for trading on any national exchange or quoted in the over-the-counter market, the fair value thereof (as of a date which is within 20 days of the date as of which the determination is to be made) as determined mutually by the Company's Board of Directors and the holders of a majority of the Warrant Shares then issuable upon exercise of all Warrants then outstanding.

"NASD" shall mean the National Association of Securities Dealers, Inc.

"Options" shall mean any rights, options or warrants to subscribe for, purchase or otherwise acquire either Additional Shares of Common Stock or Convertible Securities.

"Other Securities" shall mean any stock (other than Common Stock) and other securities of the Company or any other Person (corporate or otherwise) which the holders of the Warrants at any time shall be entitled to receive, or shall have received, upon the exercise of the Warrants, in lieu of or in addition to Common Stock, or which at any time shall be issuable or shall have been issued in exchange for or in replacement of Common Stock or Other Securities pursuant to Section 4 or otherwise.

"Person" shall mean any individual, firm, partnership, corporation, trust, joint venture, association, joint stock company, limited liability company, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof, and shall include any successor (by merger or otherwise) of such entity.

"Purchase Price" shall mean initially $8.00 per share, subject to adjustment and readjustment from time to time as provided in Section 3, and, as so adjusted or readjusted, shall remain in effect until a further adjustment or readjustment thereof is required by Section 3.

"Redemption Agreement" shall mean that certain Preferred Stock Redemption Agreement, dated as of June 30, 2004, among the Company, the Initial Holder and the other initial holders of Warrants.

"Registration Rights Agreement" shall mean the Investors Rights Agreement, dated as of the date hereof between the Company, the Initial Holder and the other parties thereto.

"Restricted Securities" shall mean (i) any Warrants bearing the applicable legend set forth in Section 10.1, (ii) any shares of Common Stock (or Other Securities) issued or issuable upon the exercise of Warrants which are (or, upon issuance, will be) evidenced by a certificate or certificates bearing the applicable legend set forth in such Section, and (iii) any shares of Common Stock (or Other Securities) issued subsequent to the exercise of any of the Warrants as a dividend or other distribution with respect to, or resulting from a subdivision of the outstanding shares of Common Stock (or other Securities) into a greater number of shares by reclassification, stock splits or otherwise, or in exchange for or in replacement of the Common Stock (or Other Securities) issued upon such exercise, which are evidenced by a certificate or certificates bearing the applicable legend set forth in such Section.

"Rights" shall have the meaning assigned to it in Section 3.10.

"Securities Act" shall mean the Securities Act of 1933, as amended from time to time, and the rules and regulations thereunder, or any successor statute.

"Warrant" shall have the meaning assigned to it in the introduction to this Warrant.

"Warrant Shares" means (a) the shares of Common Stock issued or issuable upon exercise of this Warrant in accordance with Section 2, (b) all other securities or other property issued or issuable upon any such exercise or exchange in accordance with this Warrant and (c) any securities of the Company distributed with respect to the securities referred to in the preceding clauses (a) and (b).

2. EXERCISE OF WARRANT.

2.1. Manner of Exercise; Payment of the Purchase Price. (a) This Warrant may be exercised by the Holder hereof, in whole or in part, at any time or from time to time on and after June 30, 2004 and prior to the Expiration Date, by surrendering to the Company at its principal office this Warrant, with the form of Election to Purchase Shares attached hereto as

Exhibit A (or a reasonable facsimile thereof) duly executed by the Holder and accompanied by payment of the Purchase Price for the number of shares of Common Stock specified in such form (the "Aggregate Purchase Price"). Any partial exercise of this Warrant shall be for a whole number of Warrant Shares only.

(b) Payment of the Aggregate Purchase Price may be made as follows (or by any combination of the following): (i) in United States currency by cash or delivery of a certified check or bank draft payable to the order of the Company or by wire transfer to the Company, (ii) by cancellation of such number of the shares of Common Stock otherwise issuable to the Holder upon such exercise as shall be specified for cancellation in such Election to Purchase Shares, such that the excess of the aggregate Current Market Price of such specified number of shares on the date of exercise over the portion of the Aggregate Purchase Price attributable to such shares shall equal the Aggregate Purchase Price attributable to the shares of Common Stock to be issued upon such exercise, in which case such excess amount shall be deemed to have been paid to the Company and the number of shares issuable upon such exercise shall be reduced by such number specified for cancellation, or (iii) by surrender to the Company for cancellation certificates representing shares of Common Stock of the Company owned by the Holder (properly endorsed for transfer in blank) having a Current Market Price on the date of Warrant exercise equal to the Aggregate Purchase Price.

2.2. When Exercise Effective. Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the Business Day on which this Warrant shall have been surrendered to, and the Purchase Price shall have been received by, the Company as provided in Section 2.1, and, to the extent permitted by law, at such time the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock (or Other Securities) shall be issuable upon such exercise as provided in Section 2.3 shall be deemed to have become the holder or holders of record thereof for all purposes.

2.3. Delivery of Stock Certificates, etc.; Charges, Taxes and Expenses. (a) As soon as practicable after each exercise of this Warrant, in whole or in part, and in any event within five Business Days thereafter, the Company shall cause to be issued in the name of and delivered to the Holder hereof or, subject to Section 10, as the Holder may direct,

(i) a certificate or certificates for the number of shares of Common Stock (or Other Securities) to which the Holder shall be entitled upon such exercise, and

(ii) in case such exercise is for less than all of the shares of Common Stock purchasable under this Warrant, a new Warrant or Warrants of like tenor, for the balance of the shares of Common Stock purchasable hereunder.

(b) Issuance of certificates for shares of Common Stock upon the exercise of this Warrant shall be made without charge to the Holder hereof for any issue or transfer tax or other incidental expense, in respect of the issuance of such certificates, all of which such taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax that may be payable in respect of any issuance of any Warrant or any certificate for, or any other evidence of ownership of, Warrant Shares in a name other than that of the Initial Holder of this Warrant being exercised or exchanged.

2.4. Tax Basis. The Company and the Holder shall mutually agree as to the tax basis of this Warrant for purposes of the Internal Revenue Code of 1986, as amended, and the treatment of this Warrant under such Code by each of the Company and the Holder shall be consistent with such agreement.

3. ADJUSTMENT OF PURCHASE PRICE AND COMMON STOCK ISSUABLE UPON EXERCISE .

3.1. No Adjustment of Number of Warrant Shares. Except to the extent that the number of shares of Common Stock purchasable upon exercise of this Warrant shall be proportionately increased or decreased under Section 3.4 or 3.6 along with the then outstanding shares of the Company's Common Stock upon the occurrence of a future stock split, stock dividend, reverse stock split, recapitalization or similar event, the number of shares of Common Stock purchasable upon exercise of this Warrant shall not be subject to adjustment.

3.2. Adjustment of Purchase Price.

3.2.1. Issuance of Additional Shares of Common Stock. In case the Company at any time or from time to time after the date hereof shall issue or sell Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3.3 or 3.4 but excluding Additional Shares of Common Stock purchasable upon exercise of Rights referred to in Section 3.10) without consideration or for a consideration per share less than the greater of the Purchase Price and the Current Market Price (the "New Securities Issuance Price") in effect immediately prior to such issue or sale, then, and in each such case, subject to Section 3.8, the Purchase Price shall be reduced concurrently with such issue or sale, to a price equal to the product derived by multiplying (a) .9 by (b) the New Securities Issuance Price.

3.2.2. Extraordinary Dividends and Distributions. In the case the Company at any time or from time to time after the date hereof shall declare, order, pay or make a dividend or other distribution (including, without limitation, any distribution of other or additional stock or other securities or property or Options by way of dividend or spin-off, reclassification, recapitalization or similar corporate rearrangement) on the Common Stock other than (a) a dividend payable in Additional Shares of Common Stock or (b) a regularly scheduled cash dividend (at a rate not in excess of 110% of the rate of the last regularly scheduled cash dividend theretofore paid) payable out of consolidated earnings or earned surplus, determined in accordance with generally accepted accounting principles, or (c) a dividend of Rights referred to in Section 3.10 hereof then, in each such case, subject to Section 3.8, the Purchase Price in effect immediately prior to the close of business on the record date fixed for the determination of holders of any class of securities entitled to receive such dividend or distribution shall be reduced, effective as of the close of business on such record date, to a price determined by multiplying such Purchase Price by a fraction

(x) the numerator of which shall be the Current Market Price in effect on such record date or, if the Common Stock trades on an ex-dividend basis, on the date prior to the commencement of ex-dividend trading, less the Fair Value of such dividend or distribution applicable to one share of Common Stock, and

(y) the denominator of which shall be such Current Market Price.

provided that, in the event that the amount of such dividend as so determined is equal to or greater than 10% of such Current Market Price or in the event that such fraction is less than 9/10ths, in lieu of the foregoing adjustment, adequate provision shall be made so that the Holder shall receive, upon Warrant exercise, a pro rata share of such dividend based upon the maximum number of shares of Common Stock at the time issuable to the Holder (determined without regard to whether the Warrant is exercisable at such time.)

3.3. Treatment of Options and Convertible Securities. In case the Company at any time or from time to time after the date hereof shall issue, sell, grant or assume, or shall fix a record date for the determination of holders of any class of securities of the Company entitled to receive, any Options or Convertible Securities (whether or not the rights thereunder are immediately exercisable), then, and in each such case, the maximum number of Additional Shares of Common Stock (as set forth in the instrument relating thereto, without regard to any provisions contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue, sale, grant or assumption or, in case such a record date shall have been fixed, as of the close of business on such record date (or, if the Common Stock trades on an ex-dividend basis, on the date prior to the commencement of ex-dividend trading), provided that such Additional Shares of Common Stock shall not be deemed to have been issued unless (i) the consideration per share (determined pursuant to Section 3.5) of such shares would be less than the Current Market Price in effect on the date of and immediately prior to such issue, sale, grant or assumption or immediately prior to the close of business on such record date (or, if the Common Stock trades on an ex-dividend basis, on the date prior to the commencement of ex-dividend trading), as the case may be, and (ii) such Additional Shares of Common Stock are not purchasable pursuant to Rights referred to in Section 3.10, and provided, further, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(a) whether or not the Additional Shares of Common Stock underlying such Options or Convertible Securities are deemed to be issued, no further adjustment of the Purchase Price shall be made upon the subsequent issue or sale of Convertible Securities or shares of Common Stock upon the exercise of such Options or the conversion or exchange of such Convertible Securities, except in the case of any such Options or Convertible Securities which contain provisions requiring an adjustment, subsequent to the date of the issue or sale thereof, of the number of Additional Shares of Common Stock issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities by reason of (x) a change of control of the Company, (y) the acquisition by any Person or group of Persons of any specified number or percentage of the voting securities of the Company or (z) any similar event or occurrence, each such case to be deemed hereunder to involve a separate issuance of Additional Shares of Common Stock, Options or Convertible Securities, as the case may be;

(b) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Company, or decrease in the number of Additional Shares of Common Stock issuable, upon the exercise,

conversion or exchange thereof (by change of rate or otherwise), the Purchase Price computed upon the original issue, sale, grant or assumption thereof (or upon the occurrence of the record date, or date prior to the commencement of ex-dividend trading, as the case may be, with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options, or the rights of conversion or exchange under such Convertible Securities, which are outstanding at such time;

(c) upon the expiration (or purchase by the Company and cancellation or retirement) of any such Options which shall not have been exercised or the expiration of any rights of conversion or exchange under any such Convertible Securities which (or purchase by the Company and cancellation or retirement of any such Convertible Securities the rights of conversion or exchange under which) shall not have been exercised, the Purchase Price computed upon the original issue, sale, grant or assumption thereof (or upon the occurrence of the record date, or date prior to the commencement of ex-dividend trading, as the case may be, with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration (or such cancellation or retirement, as the case may be), be recomputed as if:

(i) in the case of Options for Common Stock or Convertible Securities, the only Additional Shares of Common Stock issued or sold were the Additional Shares of Common Stock, if any, actually issued or sold upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Company for the issue, sale, grant or assumption of all such Options, whether or not exercised, plus the consideration actually received by the Company upon such exercise, or for the issue or sale of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Company upon such conversion or exchange, and

(ii) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued or sold upon the exercise of such Options were issued at the time of the issue or sale, grant or assumption of such Options, and the consideration received by the Company for the Additional Shares of Common Stock deemed to have then been issued was the consideration actually received by the Company for the issue, sale, grant or assumption of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Company (pursuant to Section 3.5) upon the issue or sale of such Convertible Securities with respect to which such Options were actually exercised;

(d) no readjustment pursuant to subdivision (b) or (c) above shall have the effect of decreasing the Purchase Price by an amount in excess of the amount of the adjustment thereof originally made in respect of the issue, sale, grant or assumption of such Options or Convertible Securities; and

(e) in the case of any such Options which expire by their terms not more than 30 days after the date of issue, sale, grant or assumption thereof, no adjustment of the Purchase

Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the manner provided in subdivision (c) above.

3.4. Treatment of Stock Dividends, Stock Splits, etc. If the Company at any time after the date of issuance of this Warrant subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Purchase Price in effect immediately prior to such subdivision will be proportionately reduced and the number of shares of Common Stock obtainable upon exercise of this Warrant will be proportionately increased. Any adjustment under this Section 3.4 shall become effective at the close of business on the date the subdivision or combination becomes effective.

3.5. Computation of Consideration. For the purposes of this Section 3,

(a) the consideration for the issue or sale of any Additional Shares of Common Stock shall, irrespective of the accounting treatment of such consideration,

(i) insofar as it consists of cash, be computed at the net cash proceeds to the Company, after deducting any expenses paid or incurred by the Company or any commissions or compensations paid or concessions or discounts allowed to underwriters, dealers or others performing similar services in connection with such issue or sale,

(ii) insofar as it consists of property (including securities) other than cash, be computed at the Fair Value thereof at the time of such issue or sale, and

(iii) in case Additional Shares of Common Stock are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be the portion of such consideration so received, computed as provided in clauses (i) and (ii) above, allocable to such Additional Shares of Common Stock, such allocation to be determined in the same manner that the Fair Value of property not consisting of cash or securities is to be determined as provided in the definition of 'Fair Value' herein;

(b) Additional Shares of Common Stock deemed to have been issued pursuant to Section 3.3, relating to Options and Convertible Securities, shall be deemed to have been issued for a consideration per share determined by dividing

(i) the total amount, if any, received and receivable by the Company as consideration for the issue, sale, grant or assumption of the Options or Convertible Securities in question, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration to protect against dilution) payable to the Company upon the exercise in full of such Options or the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, in each case computing such consideration as provided in the foregoing subdivision (a),

by

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number to protect against dilution) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities; and

(c) Additional Shares of Common Stock deemed to have been issued pursuant to Section 3.4, relating to stock dividends, stock splits, etc., shall be deemed to have been issued for no consideration.

3.6. Adjustments for Combinations, etc. In case the outstanding shares of Common Stock shall be combined or consolidated, by reverse stock split, reclassification or otherwise, into a lesser number of shares of Common Stock, the Purchase Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased and the number of shares of Common Stock purchasable upon exercise of this Warrant proportionately decreased.

3.7. Dilution in Case of Other Securities. In case any Other Securities shall be issued or sold or shall become subject to issue or sale upon the conversion or exchange of any stock (or Other Securities) of the Company (or any issuer of Other Securities or any other Person referred to in Section 4) or to subscription, purchase or other acquisition pursuant to any Options issued or granted by the Company (or any such other issuer or Person) for a consideration such as to dilute, on a basis consistent with the standards established in the other provisions of this Section 3, the purchase rights, if any, with respect to such Other Securities, granted by this Warrant, then, and in each such case, the computations, adjustments and readjustments provided for in this Section 3 with respect to the Purchase Price shall be made as nearly as possible in the manner so provided and applied to determine the amount of Other Securities from time to time receivable upon the exercise of the Warrants, so as to protect the holders of the Warrants against the effect of such dilution.

3.8. De Minimis Adjustments. If the amount of any adjustment of the Purchase Price required pursuant to this Section 3 would be less than one tenth (1/10) of one percent (1%) of the Purchase Price in effect at the time such adjustment is otherwise so required to be made, such amount shall be carried forward and adjustment with respect thereto made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate a change in the Purchase Price of at least one tenth (1/10) of one percent (1%) of such Purchase Price. All calculations under this Warrant shall be made to the nearest one-hundredth of a share.

3.9. Abandoned Dividend or Distribution. If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution (which results in an adjustment to the Purchase Price under the terms of this Warrant) and shall, thereafter, and before such dividend or distribution is paid or delivered to shareholders entitled thereto, legally abandon its plan to pay or deliver such dividend or distribution, then any adjustment made to the Purchase Price by reason of the taking of such record shall be reversed, and any subsequent adjustments, based thereon, shall be recomputed.

3.10. Shareholder Rights Plan. Notwithstanding the foregoing, in the event that the Company shall distribute "poison pill" rights pursuant to a "poison pill" shareholder rights plan (the "Rights"), the Company shall, in lieu of making any adjustment pursuant to Section 3.2.1 or Section 3.2.2 hereof, make proper provision so that each Holder who exercises a Warrant after the record date for such distribution and prior to the expiration or redemption of the Rights shall be entitled to receive upon such exercise, in addition to the shares of Common Stock issuable upon such exercise, a number of Rights to be determined as follows: (i) if such exercise occurs on or prior to the date for the distribution to the holders of Rights of separate certificates evidencing such Rights (the "Distribution Date"), the same number of Rights to which a holder of a number of shares of Common Stock equal to the number of shares of Common Stock issuable upon such exercise at the time of such exercise would be entitled in accordance with the terms and provisions of and applicable to the Rights; and (ii) if such exercise occurs after the Distribution Date, the same number of Rights to which a holder of the number of shares into which the Warrant so exercised was exercisable immediately prior to the Distribution Date would have been entitled on the Distribution Date in accordance with the terms and provisions of and applicable to the Rights.

4. CONSOLIDATION, MERGER, ETC.

4.1. Adjustments for Consolidation, Merger, Sale of Assets, Reorganization, etc. In case the Company after the date hereof (a) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation of such consolidation or merger, or (b) shall permit any other Person to consolidate with or merge into the Company and the Company shall be the continuing or surviving Person but, in connection with such consolidation or merger, the Common Stock or Other Securities shall be changed into or exchanged for stock or other securities of any other Person or cash or any other property, or (c) shall transfer all or substantially all of its properties or assets to any other Person, or (d) shall effect a capital reorganization or reclassification of the Common Stock or Other Securities (other than a capital reorganization or reclassification resulting in the issue of Additional Shares of Common Stock for which adjustment in the Purchase Price is provided in Section 3.2.1 or 3.2.2), then, and in the case of each such transaction, proper provision shall be made so that, upon the basis and the terms and in the manner provided in this Warrant, the Holder of this Warrant, upon the exercise hereof at any time after the consummation of such transaction, shall be entitled to receive (at the aggregate Purchase Price in effect at the time of such consummation for all Common Stock or Other Securities issuable upon such exercise immediately prior to such consummation), in lieu of the Common Stock or Other Securities issuable upon such exercise prior to such consummation, the highest amount of securities, cash or other property to which such Holder would actually have been entitled as a shareholder upon such consummation if such Holder had exercised this Warrant immediately prior thereto, subject to adjustments (subsequent to such consummation) as nearly equivalent as possible to the adjustments provided for in Sections 3 through 5, provided that if a purchase, tender or exchange offer shall have been made to and accepted by the holders of more than 50% of the outstanding shares of Common Stock (a "Change of Control"), and if the Holder so designates in a notice given to the Company on or before the date immediately preceding the date of the consummation of such transaction, the Holder of this Warrant shall be entitled to receive the highest amount of securities, cash or other property to which it would actually have been entitled as a shareholder if the Holder of this Warrant had exercised this

Warrant prior to the expiration of such purchase, tender or exchange offer and accepted such offer, subject to adjustments (from and after the consummation of such purchase, tender or exchange offer) as nearly equivalent as possible to the adjustments provided for in Section 3 through 5.

4.2. Assumption of Obligations. Notwithstanding anything contained in this Warrant to the contrary, the Company shall not effect any of the transactions described in clauses (a) through (d) of Section 4.1 unless, prior to the consummation thereof, each Person (other than the Company) which may be required to deliver any stock, securities, cash or property upon the exercise of this Warrant as provided herein shall assume, by written instrument delivered to, and reasonably satisfactory to, the Holder of this Warrant, (a) the obligations of the Company under this Warrant (and if the Company shall survive the consummation of such transaction, such assumption shall be in addition to, and shall not release the Company from, any continuing obligations of the Company under this Warrant), (b) the obligations of the Company under the Registration Rights Agreement and (c) the obligation to deliver to the Holder such shares of stock, securities, cash or property as, in accordance with the foregoing provisions of this Section 4, the Holder may be entitled to receive.

5. OTHER DILUTIVE EVENTS. In case any event shall occur as to which the provisions of Section 3 or Section 4 hereof are not strictly applicable or if strictly applicable would not fairly protect the purchase rights of the Holder in accordance with the essential intent and principles of such Sections, then in each such case, the Board of Directors of the Company shall make an adjustment in the application of such provisions, in accordance with such essential intent and principles, so as to preserve, without dilution, the purchase rights represented by this Warrant.

6. NO DILUTION OR IMPAIRMENT. The Company shall not, by amendment of its certificate of incorporation or through any consolidation, merger, reorganization, transfer of assets, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of this Warrant against dilution or other impairment. Without limiting the generality of the foregoing, the Company (a) shall not permit the par value of any shares of stock receivable upon the exercise of this Warrant to exceed the amount payable therefor upon such exercise, (b) shall take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of stock, free from all liens, security interests, encumbrances (in each of the foregoing cases, other than those imposed by the Holder), taxes, preemptive rights and charges on the exercise of the Warrants from time to time outstanding, and (c) shall not take any action which results in any adjustment of the Purchase Price if the total number of shares of Common Stock (or Other Securities) issuable after the action upon the exercise of all of the Warrants would exceed the total number of shares of Common Stock (or Other Securities) then authorized by the Company's Articles of Organization and available for the purpose of issue upon such exercise.

7. ACCOUNTANTS' REPORT. In each case of any adjustment or readjustment in the number of shares of Common Stock (or Other Securities) issuable upon the

exercise of this Warrant or in the Purchase Price, the Company at its sole expense shall promptly compute such adjustment or readjustment in accordance with the terms of this Warrant and cause independent certified public accountants of recognized national standing (which may be the regular auditors of the Company) selected by the Company to verify such computation (other than any computation of the Fair Value of property) and prepare a report setting forth such adjustment or readjustment and showing in reasonable detail the method of calculation thereof and the facts upon which such adjustment or readjustment is based, including a statement of (a) the consideration received or to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued, (b) the number of shares of Common Stock outstanding or deemed to be outstanding, and (c) the Purchase Price in effect immediately prior to such issue or sale and as adjusted and readjusted (if required by Section 3) on account thereof. The Company shall forthwith mail a copy of each such report to each holder of a Warrant. The Company shall also keep copies of all such reports at its principal office and shall cause the same to be available for inspection at such office during normal business hours by any holder of a Warrant or any prospective purchaser of a Warrant designated by the holder thereof.

8. NOTICES OF CORPORATE ACTION. In the event of:

(a) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or

(b) any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any consolidation or merger involving the Company and any other Person, any transaction or series of transactions in which more than 50% of the voting securities of the Company are transferred to another Person, or any transfer, sale or other disposition of all or substantially all the assets of the Company to any other Person, or

(c) any voluntary or involuntary dissolution, liquidation or winding-up of the Company,

the Company shall mail to each holder of a Warrant a notice specifying (i) the date or expected date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right, and (ii) the date or expected date on which any such reorganization, reclassification, recapitalization, consolidation, merger, transfer, sale, disposition, dissolution, liquidation or winding-up is to take place and the time, if any such time is to be fixed, as of which the holders of record of Common Stock (or Other Securities) shall be entitled to exchange their shares of Common Stock (or Other Securities) for the securities or other property deliverable upon such reorganization, reclassification, recapitalization, consolidation, merger, transfer, dissolution, liquidation or winding-up. Such notice shall be mailed at least 20 days prior to the date therein specified.

9. REGISTRATION OF COMMON STOCK. If any shares of Common Stock required to be reserved for purposes of exercise of this Warrant require registration with or approval of any governmental authority under any federal or state law (other than the Securities

Act) before such shares may be issued upon exercise, the Company shall, at its expense and as expeditiously as possible, use its best efforts to cause such shares to be duly registered or approved, as the case may be. At any such time as Common Stock is listed on any national securities exchange, the Company shall, at its expense, obtain promptly and maintain the approval for listing on each such exchange, upon official notice of issuance, the shares of Common Stock issuable upon exercise of the then outstanding Warrants and maintain the listing of such shares after their issuance; and the Company shall also list on such national securities exchange, shall register under the Exchange Act and shall maintain such listing of, any Other Securities that at any time are issuable upon exercise of the Warrants, if and at the time that any securities of the same class shall be listed on such national securities exchange by the Company.

10. RESTRICTIONS ON TRANSFER.

10.1. Restrictive Legends. Except as otherwise permitted by this Section 10, each Warrant (including each Warrant issued upon the transfer of any Warrant) shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THIS WARRANT AND ANY SECURITIES ACQUIRED UPON THE EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAW OF ANY STATE, AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION TO THE REGISTRATION REQUIREMENTS OF SUCH ACT AND SUCH LAWS. THIS WARRANT AND SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT IN COMPLIANCE WITH THE CONDITIONS SPECIFIED IN THIS WARRANT.

Except as otherwise permitted by this Section 10, each certificate for Common Stock (or Other Securities) issued upon the exercise of any Warrant, and each certificate issued upon the transfer of any such Common Stock (or Other Securities), shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAW OF ANY STATE, AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION TO THE REGISTRATION REQUIREMENTS OF SUCH ACT AND SUCH LAWS. SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT IN COMPLIANCE WITH THE CONDITIONS SPECIFIED IN THE COMMON STOCK PURCHASE WARRANT ISSUED BY CLEAN HARBORS, INC., A COMPLETE AND CORRECT COPY OF WHICH IS AVAILABLE FOR INSPECTION AT THE COMPANY'S PRINCIPAL OFFICE

AND WILL BE FURNISHED TO THE HOLDER OF SUCH SECURITIES UPON WRITTEN REQUEST AND WITHOUT CHARGE."

10.2. Transfer to Comply With the Securities Act. Restricted Securities may not be sold, assigned, pledged, hypothecated, encumbered or in any manner transferred or disposed of (a "Transfer"), in whole or in part, except in compliance with the provisions of the Securities Act and state securities or Blue Sky laws and the terms and conditions hereof.

10.3. Termination of Restrictions. The restrictions imposed by this Section 10 on the transferability of Restricted Securities shall cease and terminate as to any particular Restricted Securities (a) when a registration statement with respect to the sale of such securities shall have been declared effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (b) when such securities are sold pursuant to Rule 144 (or any similar provision then in force) under the Securities Act, or (c) when, in the reasonable opinion of both counsel for the Holder and counsel for the Company, such restrictions are no longer required or necessary in order to protect the Company against a violation of the Securities Act upon any sale or other disposition of such securities without registration thereunder. Whenever such restrictions shall cease and terminate as to any Restricted Securities, the Holder shall be entitled to receive from the Company, without expense, new securities of like tenor not bearing the applicable legends required by Section 10.1.

10.4. Exempt Transfers. The restrictions on the transfer of this Warrant or the Warrant Shares set forth in this Section 10 shall not apply to any transfer made in compliance with applicable state and federal securities laws.

11. RESERVED.

12. RESERVATION OF STOCK, ETC The Company shall at all times reserve and keep available, solely for issuance and delivery upon exercise of the Warrants, the number of shares of Common Stock (or Other Securities) from time to time issuable upon exercise of the Warrants (the "Required Reserve Amount"). The initial number of shares of Common Stock reserved for issuance upon exercise of all Warrants and each increase (or decrease) in the number of shares so reserved shall be allocated pro rata among the holders of Warrants based on the number of shares of Common Stock issuable upon exercise of the Warrants held by each holder on June 30, 2004 or the effective date of such increase (or decease) in the number of reserved shares, as the case may be (the "**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer any of such holder's Warrants, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Warrants shall be allocated to the remaining holders of Warrants, pro rata based on the number of shares of Common Stock issuable upon exercise of the Warrants then held by such holders. All shares of Common Stock (or Other Securities) issuable upon exercise of any Warrant shall be duly authorized and, when issued upon such exercise, shall be validly issued and, in the case of shares, fully paid and nonassessable, with no liability on the part of the holders thereof, and, in the case of all securities, shall be free from all liens, security interests, encumbrances (in each of the foregoing cases, other than those imposed by the Holder), taxes, preemptive rights and charges. The transfer agent for the Common Stock, and every subsequent transfer agent for any

shares of the Company's capital stock issuable upon the exercise of any of the purchase rights represented by this Warrant, are hereby irrevocably authorized and directed at all times until the Expiration Date to reserve such number of authorized and unissued shares as shall be requisite for such purpose. The Company shall keep copies of this Warrant on file with the transfer agent for the Common Stock and with every subsequent transfer agent for any shares of the Company's capital stock issuable upon the exercise of the rights of purchase represented by this Warrant. The Company shall supply such transfer agent with duly executed stock certificates for such purpose. All Warrant Certificates surrendered upon the exercise of the rights thereby evidenced shall be canceled, and such canceled Warrants shall constitute sufficient evidence of the number of shares of stock which have been issued upon the exercise of such Warrants.

13. REGISTRATION AND TRANSFER OF WARRANTS, ETC.

13.1. Warrant Register; Ownership of Warrants. Each Warrant issued by the Company shall be numbered and shall be registered in a warrant register (the "Warrant Register") as it is issued and transferred, which Warrant Register shall be maintained by the Company at its principal office or, at the Company's election and expense, by a Warrant Agent or the transfer agent. The Company shall be entitled to treat the registered Holder of any Warrant on the Warrant Register as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in such Warrant on the part of any other Person, and shall not be affected by any notice to the contrary, except that, if and when any Warrant is properly assigned in blank, the Company may (but shall not be obligated to) treat the bearer thereof as the owner of such Warrant for all purposes. Subject to Section 10, a Warrant, if properly assigned, may be exercised by a new holder without a new Warrant first having been issued.

13.2. Transfer of Warrants. Subject to compliance with Section 10, if applicable, this Warrant and all rights hereunder are transferable in whole or in part, without charge to the Holder hereof, upon surrender of this Warrant with a properly executed Form of Assignment attached hereto as Exhibit B at the principal office of the Company. Upon any partial transfer, the Company shall at its expense issue and deliver to the Holder a new Warrant of like tenor, in the name of the Holder, which shall be exercisable for such number of shares of Common Stock with respect to which rights under this Warrant were not so transferred.

13.3. Replacement of Warrants. On receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of any such mutilation, on surrender of such Warrant to the Company at its principal office and cancellation thereof, the Company at its expense shall execute and deliver, in lieu thereof, a new Warrant of like tenor.

13.4. Adjustments To Purchase Price and Number of Shares. Notwithstanding any adjustment in the Purchase Price or in the number or kind of shares of Common Stock purchasable upon exercise of this Warrant, any Warrant theretofore or thereafter issued may continue to express the same number and kind of shares of Common Stock as are stated in this Warrant, as initially issued. The provisions of this Section 13.4 shall, however, in no manner affect the number or kind of shares of Common Stock issuable upon exercise of this Warrant, which shall be determined in accordance with the other provisions of this Warrant.

13.5. Fractional Shares. Notwithstanding any adjustment pursuant to Section 3 in the number of shares of Common Stock covered by this Warrant or any other provision of this Warrant, the Company shall not be required to issue fractions of shares upon exercise of this Warrant or to distribute certificates which evidence fractional shares. In lieu of fractional shares, the Company shall make payment to the Holder, at the time of exercise of this Warrant as herein provided, in an amount in cash equal to such fraction multiplied by the Current Market Price of a share of Common Stock on the date of Warrant exercise.

14. REMEDIES; SPECIFIC PERFORMANCE. The Company stipulates that there would be no adequate remedy at law to the Holder of this Warrant in the event of any default or threatened default by the Company in the performance of or compliance with any of the terms of this Warrant and accordingly, the Company agrees that, in addition to any other remedy to which the Holder may be entitled at law or in equity, the Holder shall be entitled to seek to compel specific performance of the obligations of the Company under this Warrant, without the posting of any bond, in accordance with the terms and conditions of this Warrant in any court of the United States or any State thereof having jurisdiction, and if any action should be brought in equity to enforce any of the provisions of this Warrant, the Company shall not raise the defense that there is an adequate remedy at law. Except as otherwise provided by law, a delay or omission by the Holder hereto in exercising any right or remedy accruing upon any such breach shall not impair the right or remedy or constitute a waiver of or acquiescence in any such breach. No remedy shall be exclusive of any other remedy. All available remedies shall be cumulative.

15. NO RIGHTS OR LIABILITIES AS SHAREHOLDER. Nothing contained in this Warrant shall be construed as conferring upon the Holder hereof any rights as a shareholder of the Company or as imposing any obligation on the Holder to purchase any securities or as imposing any liabilities on the Holder as a shareholder of the Company, whether such obligation or liabilities are asserted by the Company or by creditors of the Company.

16. NOTICES. All notices and other communications (and deliveries) provided for or permitted hereunder shall be made in writing by hand delivery, telecopier, any nationally-recognized courier guaranteeing overnight delivery or first class registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Company:

Clean Harbors, Inc.
1501 Washington Street
Braintree, MA 02185
Attn: Chief Financial Officer
Telephone: 781-849-1800, ext. 4450
Fax No. 781-848-1632

with copies to:

Davis, Malm & D'Agostine, P.C.
One Boston Place
Boston, Massachusetts 02108
Attn: C. Michael Malm, Esq.
Telephone: 617-365-2500
Fax No.: 617-525-6215

If to Holder:	Cerberus CH LLC 299 Park Avenue New York, New York 10022 Attn: Kevin Genda and Daniel Wolf Fax No. 212 891-1540
with copies to:	Schulte Roth & Zabel LLP 919 Third Avenue New York, New York 10022 Attn: Stuart D. Freedman, Esq. Fax No. 212 593-5955

All such notices and communications (and deliveries) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; when receipt is acknowledged, if telecopied; on the next Business Day, if timely delivered to a courier guaranteeing overnight delivery; and five days after being deposited in the mail, if sent first class or certified mail, return receipt requested, postage prepaid; provided, that the exercise of any Warrant shall be effective in the manner provided in Section 2.

17. AMENDMENTS. This Warrant and any term hereof may not be amended, modified, supplemented or terminated, and waivers or consents to departures from the provisions hereof may not be given, except by written instrument duly executed by the party against which enforcement of such amendment, modification, supplement, termination or consent to departure is sought.

18. DESCRIPTIVE HEADINGS, ETC. The headings in this Warrant are for convenience of reference only and shall not limit or otherwise affect the meaning of terms contained herein. Unless the context of this Warrant otherwise requires: (1) words of any gender shall be deemed to include each other gender; (2) words using the singular or plural number shall also include the plural or singular number, respectively; (3) the words “hereof”, “herein” and “hereunder” and words of similar import when used in this Warrant shall refer to this Warrant as a whole and not to any particular provision of this Warrant, and Section and paragraph references are to the Sections and paragraphs of this Warrant unless otherwise specified; (4) the word “including” and words of similar import when used in this Warrant shall mean “including, without limitation,” unless otherwise specified; (5) “or” is not exclusive; and (6) provisions apply to successive events and transactions.

19. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the law of the State of New York.

20. REGISTRATION RIGHTS AGREEMENT. The shares of Common Stock (and Other Securities) issuable upon exercise of this Warrant (or upon conversion of any shares of Common Stock issued upon such exercise) shall constitute Registrable Securities (as such term is defined in the Registration Rights Agreement). Each holder of this Warrant shall be entitled to all of the benefits afforded to a Holder of any such Registrable Securities under the Registration Rights Agreement and such Holder, by its acceptance of this Warrant, agrees to be

bound by and to comply with the terms and conditions of the Registration Rights Agreement applicable to such holder as a Holder of such Registrable Securities.

21. NOTICE. Notwithstanding any other provision herein to the contrary, the Company agrees to provide the Holder with no less than thirty (30) days prior written notice of the Expiration Date in order for the Holder, in its sole discretion, to exercise its right to acquire any or all of the Warrant Shares hereunder. To the extent such notice is not given in a timely manner, the otherwise applicable Expiration Date shall not be deemed to have occurred until 30 days after delivery of such notice.

22. EXPIRATION. The right to exercise this Warrant shall expire at 5:00 p.m., New York City time, on September 10, 2009.

23. COSTS AND ATTORNEYS' FEES. In the event that any action, suit or other proceeding is instituted concerning or arising out of this Warrant, the Company agrees and the Holder, by taking and holding this Warrant agrees, that the prevailing party shall recover from the non-prevailing party all of such prevailing party's costs and reasonable attorneys' fees incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom.

24. MOST FAVORED HOLDER. The Company agrees that if at any time or from time to time prior to the Expiration Date it enters into any agreement with, or issues Options or Convertible Securities to, any Person other than a Holder of this Warrant, which provides such Person with more favorable terms of the type set forth in Sections 3, 4, 5 and 6 of this Warrant (collectively, "More Favorable Terms"), then the Company shall issue to the Holder a new Warrant in exchange for this Warrant, effective from the date such agreement is consummated or Option or Convertible Security is issued until the Expiration Date. The terms of such new Warrant shall contain such More Favorable Terms or other terms as may then be mutually agreed by the Company and the Holder as providing economic benefits not less favorable to the Holder than such More Favorable Terms. In no event, however, shall such new Warrant be exercisable into a greater number of Warrant Shares than this Warrant and such limitation shall be taken into account in determining whether the terms of the new Warrant provide economic benefits not less favorable to the Holder than such More Favorable Terms.

25. REQUIRED ACTION UPON AUTHORIZED SHARE FAILURE . If at any time while any of the Warrants remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of all of the Warrants at least a number of shares of Common Stock equal to the Required Reserve Amount (an "Authorized Share Failure"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Warrants then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than 75 days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall

provide each stockholder with a proxy statement and shall use its reasonable best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock. In the event that notwithstanding the foregoing, the Company is unable to issue any Warrant Shares for which an Election to Purchase Shares has been received as a result of an Authorized Share Failure, the Company shall pay cash in exchange for cancellation of such Warrant Shares, at a price per Warrant Share equal to the difference between the Current Market Price and the Purchase Price as of the date of the attempted exercise.

CLEAN HARBORS, INC.

By: _____

Title: _____

EXHIBIT A to
Common Stock Purchase Warrant

FORM OF
ELECTION TO PURCHASE SHARES

The undersigned hereby irrevocably elects to exercise the Warrant to purchase _____ shares of Common Stock, par value $.01 per share ("Common Stock"), of CLEAN HARBORS, INC., and hereby makes payment of $ _____ therefor [or] makes payment by reduction pursuant to Section 2.1(b)(ii) of the Warrant of the number of shares of Common Stock otherwise issuable to the Holder upon Warrant exercise by _____ shares [or] makes payment therefor by delivery of the following Common Stock Certificates of the Company (properly endorsed for transfer in blank) for cancellation by the Company pursuant to Section 2.1(b)(iii) of the Warrant, certificates of which are attached hereto for cancellation _____ [list certificates by number and amount]. The undersigned hereby requests that certificates for such shares be issued and delivered as follows:

ISSUE TO: _____
(NAME)

_____
(ADDRESS, INCLUDING ZIP CODE)

_____
(SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER)

DELIVER TO: _____
(NAME)

_____
(ADDRESS, INCLUDING ZIP CODE)

If the number of shares of Common Stock purchased (and/or reduced) hereby is less than the number of shares of Common Stock covered by the Warrant, the undersigned requests that a new Warrant representing the number of shares of Common Stock not so purchased (or reduced) be issued and delivered as follows:

ISSUE TO: _____
(NAME OF HOLDER

_____
(ADDRESS, INCLUDING ZIP CODE)

DELIVER TO: _____
(NAME OF HOLDER)

_____
(ADDRESS, INCLUDING ZIP CODE)

Dated: _____, 20____

[NAME OF HOLDER]

By _____
Name:
Title:

EXHIBIT B to
Common Stock Purchase Warrant

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto the Assignee named below all of the rights of the undersigned to purchase Common Stock, par value $.01 per share ("Common Stock") of CLEAN HARBORS, INC., represented by the Warrant, with respect to the number of shares of Common Stock set forth below:

Name of Assignee	Address	No. of Shares

and does hereby irrevocably constitute and appoint _____ Attorney to make such transfer on the books of maintained for that purpose, with full power of substitution in the premises.

Dated: _____, 20____

NAME OF HOLDER

By _____
Name:
Title:

EXHIBIT 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Alan S. McKim, certify that:

I have reviewed this Quarterly Report on Form 10-Q of Clean Harbors, Inc.;

Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared:

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date") and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of Evaluation Date; and

(c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrants most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have significant role in the registrant's internal control over financial reporting.

Date: August 6, 2004

/s/ Alan S. McKim

Alan S. McKim
President and Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Mark S. Burgess, certify that:

I have reviewed this Quarterly Report on Form 10-Q of Clean Harbors, Inc.;

Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared:

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date") and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the Evaluation Date; and

(c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrants most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have significant role in the registrant's internal control over financial reporting.

Date: August 6, 2004

/s/ Mark S. Burgess

Mark S. Burgess
Executive Vice President and
Chief Financial Officer

EXHIBIT 32

CLEAN HARBORS, INC. AND SUBSIDIARIES

CERTIFICATION PURSUANT TO
SECTION 1350, CHAPTER 63 OF TITLE 18, UNITED STATES CODE,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. §1350, each of the undersigned certifies that, to his knowledge, this Quarterly Report on Form 10-Q for the period ended June 30, 2004 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in this report fairly presents, in all material respects, the financial condition and results of operations of Clean Harbors, Inc.

Date: August 6, 2004

/s/ Alan S. McKim

Alan S. McKim
Chief Executive Officer

Date: August 6, 2004

/s/ Mark S. Burgess

Mark S. Burgess
Executive Vice President and Chief Financial Officer